Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

FINOVA CAPITAL CORPORATION
SUCCESSOR IN INTEREST TO
BELL ATLANTIC TRICON LEASING CORPORATION
Petitioner

v.

LIFECARE X-RAY, INC.; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; YAHYA FADL; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; and LIFECARE CARDIAC CENTER, INC.
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA PITTSBURGH

PETITION FOR A WRIT OF CERTIORARI

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December 18, 1997

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QUESTION PRESENTED

Petitioner obtained a valid judgment in California. The judgment was properly registered in Pennsylvania. The Pennsylvania court found the judgment to be valid but went on to re-determine the validity of the judgment and bar Petitioner from proceeding with enforcement.

The question presented is whether the court below erred in re-determining the validity of a properly registered sister state judgment under the Full Faith and Credit principle.

PARTIES TO THE PROCEEDING

The petitioner in this case is Finova Capital Corporation, successor in interest to Bell Atlantic Tricon Leasing Corporation.

The respondents are:

Lifecare X-Ray, Inc.
Helarion A. Beronilla, Jr.
Narcisa Lipana
Charles Chang
Samuel Flannagan
Yahya Fadl
Barid B. Jana
Paul Dascani
Gregory Spain
William Hughes
Lifecare Laboratories, Inc.
Lifecare Cardiac Center, Inc.

The Petitioner, Finova Capital Corporation is a subsidiary of The FINOVA Group Inc. Finova Capital Corporation has a number of joint investment ventures which are not publicly traded.

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PETITION FOR A WRIT OF CERTIORARI

Finova Capital Corporation, successor in interest to Bell Atlantic Tricon Leasing Corporation, respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of Pennsylvania in this case.

OPINIONS BELOW

The decision of the Supreme Court of Pennsylvania denying Petition for Allowance of Appeal, App. 1a[1], is reported at 1997 Pa. LEXIS 1929. The decision of the Superior Court of Pennsylvania on the merits, App.2a, is reported at 689 A.2d 924. The decisions of the Court of Common Pleas of Westmoreland County, Pennsylvania addressing the Full Faith and Credit issue, App. 13a-25a, are unreported.

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1. References to the Appendix to the Petition for Writ of Certiorari are styled "App.-a". There was no trial or evidentiary hearing in Pennsylvania. There were no findings of fact or conclusions of law, either written or oral, entered in conjunction with the judgment sought to be reviewed. The facts are compiled from the pleadings and documents filed or facts contained within the Opinions of the Court. References to the Reproduced Record in the Appeal to the Superior Court of Pennsylvania are styled "R-_a".

JURISDICTION

On September 19, 1997, the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal from the Superior Court of Pennsylvania. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Full Faith and Credit Clause provides that:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings may be proved, and the Effect thereof.

U.S. Const., Art. IV, § 1. The Full Faith and Credit statute provides in relevant part that:

> Such Acts, Records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738.

Pennsylvania's adoption of the "Uniform Enforcement of Foreign Judgments Act" 42 Pa. C.S.A. § 4306 is found in App. 45a - 46a. The Uniform Commercial Code § 9504 adopted by CAL.COM.CODE § 9504 is found in App. 39a - 44a.

STATEMENT OF THE CASE

This Full Faith and Credit case began as a breach of contract action in the Superior Court of the State of California for the County of Orange. Default was entered and after hearing judgments were entered. The California Judgments were registered in Pennsylvania in accordance with the Uniform Enforcement Of Foreign Judgments Act of Pennsylvania. The first request that the California judgment be given Full Faith and Credit was contained in the Entry of Judgment. App. 32a. The Respondents moved in Pennsylvania to open or strike the judgments. Your Petitioner raised Full Faith and Credit in Paragraph 9 of its Answer to Rule to Show Cause 30a. The Pennsylvania lower Court found the judgments to be valid under Full Faith and Credit and denied the Respondents request to open or strike the judgments but then went on to hold "Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule [of California]". The Superior Court of Pennsylvania affirmed the lower court noting the manner in which the Full Faith and Credit issue was resolved. The Pennsylvania Supreme Court denied a Petition for Allowance of Appeal without an Opinion. The decision rests on an erroneous view of the federal Full Faith and Credit statute, 28 U.S.C. §1738, conflicts with decisions of this Court and other Courts and raises an important question of interstate law warranting this Courts plenary review.

1. BACKGROUND

Commencing in April, 1988, your Petitioner, Bell Atlantic Tricon Leasing Corporation (BAT) [now Finova Capital Corporation], began leasing medical equipment to various doctors individually. By October of 1991 a mix of individual lessees and corporate lessees with individual guarantors had entered into six separate and distinct leases. In early 1992 all leases went into default. The lease agreements provided jurisdiction and a choice of law in California.

2. INITIAL PROCEEDINGS IN CALIFORNIA

Petitioner whose principal place of business was in the State of California instituted suit on June 25, 1992, in Orange County, California, under the terms of the lease agreement. A Complaint for Breach of all six Leases was filed at Case No. 691693 in the Superior Court of the State of California for the County of Orange. The Defendants were properly served. After a failed effort to bring the leases current, a default was entered. After a hearing on January 26, 1993, in Orange County, damages were assessed and judgments were entered.[2] The Order of the California Court also provided for the equipment to be delivered to your Petitioner. The Order further provided:

> "Upon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code § 9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease Nos. ....." App. 34a.

3. THE PROCEEDINGS IN PENNSYLVANIA

a. Court of Common Pleas of Westmoreland County, Pennsylvania

On April 7, 1993, the California judgments were registered in Pennsylvania pursuant to the Uniform Enforcement of Foreign Judgments Act (UEFJA) 42 Pa. C.S. §4306. App. 30a - 38a.

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2. The claims under Lease Nos. 2153 and 2089 (Counts First thru Eighth) were resolved prior to hearing and no judgment was entered. The judgments relating to Counts Ninth through Twelfth (Lease No. 2293) involving individual lessees has been paid through the sale of the equipment and other collections under this judgment. No claim remains under Lease No. 2293. The remaining three leases each involved separate corporations (Lifecare X-Ray, Inc., Lifecare Laboratories, Inc. and Lifecare Cardiac Center, Inc.) with individual guarantors. The Order of Judge Brickner in California dated January 26, 1993, encompassing the original four leases is referred to in this Petition and in the Court Opinions interchangeably as "judgment" and "judgments".

On April 8, 1993, the Respondents were notified that the leased equipment would be reclaimed and sold on or after May 10, 1993. Then counsel for all the Respondents requested an extension of the May 10, 1993, deadline. App. 51a. In mid May 1993 the equipment for which the Respondents were guarantors was sold to a purchaser with whom the Respondents had been negotiating. App. 64a. The Respondents received notice of the sale of the equipment in June 1993. App. 64a.

In March of 1994 the Respondents (except for Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc.) moved to open or strike the judgments alleging, *inter alia,* that the Respondents were not properly subject to the jurisdiction of the California Court or that the judgments were invalid due to Petitioner's failure to notify the respondents of the sale of the leased property. The lower Court conducted no trial and held no evidentiary hearings. The Court decided the case upon the Petition, Answer, Affidavits, Depositions and Oral Arguments. There were no findings of fact or conclusions of law other than contained in the Opinion of the Court. On March 26, 1996, the Court denied the Respondents request to open or strike the judgment, concluding that there was no support for the Respondents' contention that they were not properly subject to the jurisdiction of the California Courts. App. 13a-26a. The Court's Opinion, further concluded that:

> "...the Court has not been provided with the valid defense to the judgment that would allow it to disturb Judge Brickner's original Order granting the Plaintiff's substantive default judgment against the various defendants." App. 16a.

The Court, however, goes on to point out that the Respondents were

> "seeking a means of preventing [BAT] from collecting a deficiency judgment asserted against them. Thus, the questions arises as to whether the possibility of a deficiency judgment exists in this matter". App. 16a-17a.

The Court then goes on to conclude

> "by choosing to proceed with the sale of the leased equipment without notice, the Plaintiff forfeited its right to seek a deficiency judgment against the Defendants under 9504". App. 23a.

The Lower Court of Pennsylvania then entered an Order which states:

> "Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule." App. 24a-25a.

b. The Pennsylvania Superior Court

On Appeal, The Pennsylvania Superior Court affirmed the lower Court's Order barring the enforcement of the registered Pennsylvania judgment. The Superior Court held that "the deficiency judgments are not enforceable under California Law" App. 11a. The Court further concluded that since the deficiency judgments are not valid, bond was properly denied. App. 12a.

On the Full Faith and Credit issue, however, the Superior Court disregarded its own teaching concerning providing legal authority for its pronouncement relative to validity of the deficiency judgment. The Superior Court states:

> "This notice requirement is to be strictly construed and failure to comply with it will act as an absolute bar to a deficiency judgment under California law". App. 11a.

The Superior Court cites no California cases for its holding. Every California case cited by any of the parties deals with a claimant seeking to obtain a judgment after the sale of collateral.

The Superior Court's continued and repeated references to your Petitioner seeking deficiency judgments in connection with the sale of the equipment is flatly wrong. BAT had a judgment as of January 26, 1993, in California. BAT had a judgment in Pennsylvania as of April 7, 1993. BAT was seeking to enforce the judgment by selling its own equipment and applying the net proceeds to its judgment as is appropriate for leases.

c. The Pennsylvania Supreme Court

On April 24, 1997, Petitioners filed a timely Petition for Allowance of Appeal to the Supreme Court of Pennsylvania requesting consideration of these important questions involving interstate relationships in a commercial context and the application of the Full Faith and Credit principle to an out of state judgment. On September 19, 1997, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal without comment.

4. SUBSEQUENT PROCEEDINGS IN CALIFORNIA

In October, 1995, Petitioner returned to California to request a correction of the Order of January 26, 1993, relating, *inter alia,* to the reference to § 9504 as it related to the leases entered into after January 1, 1991, to reflect their status as UCC § 2A leases. On October 27, 1995, Judge Brickner amended the Order of January 26, 1993. On subsequent application by the respondents by Order dated December 15, 1995, Judge Brickner voided the amendment as being more than a "clerical error" and indicated that the language of the judgment bestowed a right upon the defaulted defendants. App. 27a. The court did not determine the nature and extent of that right.

In May of 1996, Petitioner returned to California as suggested by Judge Scherer's Order of March 26, 1996. App. 24a-25a. By Order dated June 24, 1996, Judge Brickner declined to take any further action in this matter. Judge Brickner stated:

> "However, from the perspective of the California Court, this is a case whose trial has concluded, with the rights and duties of the parties now described with finality in the *judgment.* App. 29a.

5. THE LIFECARE CARDIAC CENTER, INC. AND LIFECARE LABORATORIES, INC. JUDGMENTS

Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. did not Petition the lower court for relief. The individual guarantors were Petitioners. The equipment under their leases had not been sold prior to the filing of the Petition to Open or

Strike Judgment. New notices of private sale were sent prior to the sale of the equipment in response to the objection raised by the Petition to Open or Strike App. 56a-63a.

Even though Lifecare Cardian Center, Inc. and Lifecare Laboratories, Inc. never requested relief and notwithstanding new notices of being sent in response to the Petition to Open or Strike, the lower Court's Order as filed bars two judgments that were not controverted. This issue was not addressed by the Superior Court other than to note some of the named defendants did not defend this action and are not appellees herein. Footnote 1 App.4a. The Superior Court denied a request for Reconsideration to address this issue.

REASONS FOR GRANTING THE WRIT

The Pennsylvania lower court has "barred" your petitioner "from seeking deficiency judgments in Pennsylvania" while acknowledging that the California judgments were properly obtained in California, registered in Pennsylvania and not subject to being opened or struck. The Pennsylvania Superior Court has referred to the deficiency judgments as "not valid". These decisions are flatly inconsistent with the basic principles of the Full Faith and Credit provision of the U.S. Constitution and 28 U.S.C. §1738. These decisions are also flatly inconsistent with numerous decisions of Pennsylvania courts, courts of other states and prior decisions of this court.

Full Faith and Credit looks toward integration of the judicial systems of the states on the matter of the respect due to judgments. The availability of an impartial tribune to correct Pennsylvania's failure to give the California judgment the respect constitutionally due it stands at the center of our Union.

Contrary to the reasoning of the Pennsylvania Superior Court such an assault upon the integrity of the judicial system finds no support in the Full Faith and Credit principle.

1. The decisions of the Pennsylvania Courts fundamentally misinterpret the Full Faith and Credit obligation of a state court under 28 U.S.C. §1738. As this Court has explained, the statue "directs all courts to treat a state court

judgment with the same respect that it would receive in the courts of the rendering state" *Matsushita Elec. Indus. Co. v. Epstein,* 116 S.Ct. 873, 877 (1996). The Pennsylvania lower court held that the California judgments bore all the earmarks of a judgment entitled to full faith and credit; it is the final judgment of a court with jurisdiction over the parties and the subject matter, and no one maintains that it was obtained under duress or by fraud. See *Riehle v. Margolies,* 279 U.S. 218, 225 (1929); *Lea Brilmayer et al,* AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM 177-85 (1986). California has in the first instance actually adjudicated the original judgment. The state whose court has devoted its resources to resolving the dispute and placed its prestige and dignity behind a judgment acquires an interest in the finality of the decree - an interest that must be respected by courts in other states as a matter of federal constitutional law. *Magnolia Petroleum Co. v Hunt* 320 U.S. at 430, 436-39; *Williams v. North Carolina,* 317 U.S. 287, 293-96 (1942); *Thomas v. Washington Gas Light Co.,* 448 U.S. 261, 293 (1986) (Rehnquist, J. dissenting). Every court in the United States must give the judgment the same effect and recognition as it would receive from the court that rendered it. 28 U.S.C. §1738. In this way; the Full Faith and Credit Clause protects the legitimate interests of parties and the courts in seeing that "there be an end of litigation" *Baldwin v. Iowa State Traveling Men's Assoc.;* 283 U.S. 522, 525 (1931). More importantly, the Clause avoids problems that would arise if courts in different states were to issue conflicting decrees, and so help "weld the independent states into a nation" *Johnson v. Muelberger,* 340 U.S. 581, 585 (1951). As Justice Stone explained for the Court in *Milwaukee County v. M. E. White Co.,* 296 U.S. 268 (1935):

> "The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the other, and to make them integral parts of a single nation

> throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

Id. at 276-77. See also *Eugene F. Scoles & Peter Hay,* CONFLICT OF LAWS §24.2 (2d ed. 1992).

Justice Stone also explained:

> "A cause of action on a judgment is different from that upon which the judgment was entered. In a suit upon a money judgment for a civil cause of action the validity of the claim upon which it was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money in the nature of a debt upon a specialty. Recovery upon it can be resisted only on the grounds that the court which rendered it was without jurisdiction, [internal quotation omitted] or that it has ceased to be obligatory because of payment or other discharge; [internal quotation omitted] or that it is a cause of action for which the State of the forum has not provided a court [internal quotation omitted] unless it is compelled to do so by the privileges and immunities clause [internal quotation omitted] or possibly because procured by fraud, [internal quotation omitted].

The California judgments were complete and final as of January 26, 1993. The judgments were recognized by Pennsylvania April 7, 1993. The only issue remaining was payment. The leased equipment belonged to BAT and if sold the net proceeds of the sale were to be applied to the unpaid balance due on the Judgments App.-34a If the respondents felt that the petitioner had not proceeded in a commercially reasonable manner as provided by California Code 9504 their recourse was with the California Courts. See *Indemnity Ins. Co. v Smoot,* 152 F.2d 667, 670-71. See also *Nationsbank of North Carolina v. Parsons,* 477 S.E. 2d 735, 739 (S.C. App. 1991), *Matson v. Matson,* 333 N.W. 2d 862 (Minn. 1983).

Pennsylvania has not followed its own decisions in dealing with the judgment registered by Petitioner. In *Noetzel v. Glasgow, Inc.,* 487 A.2d 1372, 1375 (Pa.Super. 1985) the court

found that a foreign judgment is entitled to Full Faith and Credit so long as there was jurisdiction by the court which originally awarded the judgment and the defendant had an opportunity to appear and defend. The court in *Noetzel* affirmed the refusal of the lower court to strike or open a judgment that had been property obtained in West Virginia courts, explaining that:

> "When a court of competent jurisdiction has determined a litigated cause on its merits, the judgment entered and not reversed on appeal is, forever and under all circumstances, final and conclusive as between the parties to the suit and their privies, in respect to every fact which might properly be considered in reaching a judicial determination of the controversy, and in respect to all points of law there adjudged, as those points relate directly to the cause of action in litigation." Id. 15 1376.

In *Nobel Well Service, Inc. v Penn Energy,* 502 A.2d 200 (Pa.Super. 1985) the court held:

> "The validity of a foreign judgment is established in the transferor court, and may not be retried in the Pennsylvania courts, except for the limited purposes of determining whether the transferor court had jurisdiction to enter the judgment, and whether the judgment was obtained without derogating the judgment debtor's due process rights." Id. at 205, 206.

Similarly in *Greate Bay Hotel v. Sa[illegible]n,* 609 A.2d 817 (Pa.Super. 1992), the Pennsylvania Superior Court held that Pennsylvania courts lack:

> "both the power and the jurisdiction to open [a foreign] judgment and require that the merits of [the judgment debtor's] claim be litigated in Pennsylvania. Only a court of competent jurisdiction in [the jurisdiction where the judgment was initially entered] could open the default judgment which had been entered [in that jurisdiction]." Id. at 818

In *Tronagun Corporation v. Mizerock,* 820 F.Supp. 225 (W.D. Pa. 1993) the court stated:

> "A mere procedural transfer of a final judgment to Pennsylvania from such a court for the purpose of effecting the judgment does not confer jurisdiction upon a Pennsylvania court to reconsider the merits of the case de novo. Rather, the Pennsylvania court may undertake a limited inquiry regarding the jurisdiction of the court that issued the judgment, and the process afforded the judgment debtor, and then determine whether to execute the judgment."

In *Barnes v. Buck,* 346 A.2d 778 (Pa. 1975), the Pennsylvania Supreme Court refused to re-determine an Ohio judgment. "The full faith and credit clause of the Constitution does not require that Pennsylvania entertain in its courts a non-jurisdicitonal collateral attack on the Ohio judgment" Id. at 783 (Roberts, J. concurring)

The power of the state of registration is limited. What the Pennsylvania lower did was an *ultra vires* act. The Respondents asked the Court to open or strike the judgment. The lower Court denied the Respondents' request to Open or Strike and created its own remedy by "barring" the Petitioner from seeking deficiency judgments. There is no action or Rule of Civil Procedure in Pennsylvania to "bar" a plaintiff from enforcing a valid judgment. There is no common law authority to "bar" the holder of a properly registered judgment from proceeding with enforcement of its judgment. The California judgment once recognized in Pennsylvania was to be treated as any other Pennsylvania money judgment. 42 Pa. C.S.A. § 4306. Any questions concerning the validity of the judgments must under Full Faith and Credit be determined by the rendering state. *Slone v. Slone,* 249 S.W. 2d 42 (Ky.Ct. App. 1952). The details for enforcing this new judgment are then treated as a matter of procedure, governed by forum law. The provisions of the California judgment providing for its enforcement "being in the nature of execution and not judgment, could have no extra territorial operation" and enforcement in Pennsylvania depends only on its own "local statutes and practice" *Lynde v. Lynde,* 181 U.S. 183, 187 (1901).

As with other problems at the border of substance and procedure, determining when the forum may apply its own law and when full faith and credit requires the forum to yield is not always easy. If the Pennsylvania courts felt compelled to consider the language of the California Judge relating to the sale of the personal property in a commercially reasonable manner, the precise boundary was not something the Pennsylvania courts needed to decide.

The Respondents Petition to Open or Strike Judgment in Paragraph 8 stated:

> "8. In violation of the provisions of 13 Pa.C.S.A. section 9502, et. seq., of the Uniform Commercial Code and/or the comparable provisions of the California Uniform Commercial Code, the Plaintiff failed to notify the Defendants of Plaintiff's repossession action, sale and/or releasing of the leased property."

Pennsylvania adopted the rebuttable presumption for the sale of collateral under 13 Pa. C.S.A. § 9504 in the case of *Savoy v. Beneficial Consumer Discount Co.*, 468 A.2d 465 (Pa. 1983). California adopted the Absolute Bar Rule for implementing § 9504 in the case of *Atlas Thrift Company v Horan,* 104 Cal. Rptr. 315 (Ct. App. 1972). The Absolute Bar Rule has been widely criticized. See *Robert M. Lloyd,* The Absolute Bar Rule in UCC Foreclosure Sales: A Prescription for Waste, 40 UCLA L. Rev. 695 (1993). In 1991 California amended § 9504(2) to adopt the rebuttable presumption rule for failure to sell in commercially reasonable manner where loan amount is above prescribed limits. Id. at 747. The Absolute Bar Rule pertaining to notice was retained until January 1, 1996.[3] The Respondents asked the Pennsylvania lower courts to invoke the entire § 9504 of the California Commercial Code with its potential draconian notice provision. The Pennsylvania Court duly noted that the Petitioner "as scrivener of the proposed Order signed by Judge Brickner incorporated the commercial reasonable requirements of § 9504 in the Order". App. 17a. The Court also notes that "without this language it appears

3. The deadline was extended to January 1, 1999 by amend West 1995.

that Article 2A (Article 10 in California)[4] and the specific provision of the lease agreement would have governed default remedies." App. 18a.

The Pennsylvania lower Court took a quantum (and erroneous) leap when it "determined that it is obligated to give full faith and credit to the California Order, including all provisions of § 9504.

The California judgment § 9504 language is at most characterized as "being in the nature of execution and not judgment" with no extra territorial operation *Lynde v. Lynde,* 181 U.S. 183 (1901). If the § 9504 has any extra territorial effect or if the law of the forum is determined to control the result, the result is the same and the Respondents would be entitled to have an amount credited to their judgment equal to the amount which would have been obtained if the property had been sold in a commercially reasonable manner. Under no circumstances are the Respondents entitled to have Pennsylvania courts bar the Petitioner from proceeding to enforce its properly registered judgment.

2. In the alternative assuming the Pennsylvania Courts had some authority to conclude that the notice provision of California Commercial Code §9504 applied, the Pennsylvania Courts erred in applying California law in deciding that notice had not been given. The Pennsylvania Superior Court states that Petitioner sold the equipment without notifying Respondents of the time or place of the sale. App. 6a. The Pennsylvania Superior Court goes on to examine the relevant California law pertaining to Notice for private sales of collateral and states that the Notice must include "the time of a private sale". App. 9a. This is clearly incorrect. In *Backes v. Village Corner, Inc.* 197 Cal App. 3d 209, 242 Cal Rptr. 176 (1987) the Court stated the rule:

> "When a secured party intends to proceed by private sale, as in this case, the Code permits a flexible form of Notice which allows the secured party to hold the property on the market for a period of time. Specifically the notice of

4. CAL COM. CODE § 10102 et seq.

> a private sale may simply recite the date "on or after" which the collateral will be sold.

The Notice of the Petitioner sent April 8, 1993, provided, *inter alia,*:

> It is my understanding that several alternative plans are being considered to privately sell this equipment in an effort to obtain the best price possible for the equipment.
>
> These Leases have been in default for a considerable period of time and I am advising you that Bell Atlantic Tricon will proceed with reclaiming this equipment on or shortly after May 10, 1993. If a well-defined and documented plan is not in place at that time, Bell Atlantic-Tricon will have no other alternative but to proceed with the sale of the equipment and enforcement of the judgment for any remaining balance that is due. App. 20a-21a.

This notice complies with the minimum requirements of California law by establishing the date "on or after" which the sale will proceed. i.e. May 10, 1993. The California cases have not specifically required the use of the word private in the Notice. A private sale in fact occurred so that the time and place of a public sale pursuant to the act was not required.

In *Jones v. Union Motor Co., Inc.* 779 S.W.2d 537, 541-542 (Ark.App 1989) the Court considered in detail the notice requirement and the need to include the word "private sale" in a Notice:

> Secondly, the appellant argues that the notice sent by GMAC was insufficient because it did not specifically state that the sale would be public or private or that the repossessed collateral would *actually* be sold. Section 4-9-504(3) does not specifically require that the words "public" or "private" be used in the notice. In their treatise, *Uniform Commercial Code,* James White and Robert Summers note that:
>
> For a private sale of collateral that is neither perishable nor threatens to decline speedily in value, nor is customarily sold on a recognized market, the creditor must inform the debtor of "the time after which any private

sale or other intended disposition is to be made * * *." For such public sales, 9-504 requires different information: "the time and place of any public sale * * *."

The contents of a notice for a private sale, then, are sufficient if the notice says: "The collateral will be sold at a private sale on or after (a particular date)". Courts have, however, given effect to a notice that in substance says: "The collateral will be sold in a private sale ten days or more after the sending of this notice." Both forms of notice give the debtor a minimum time in which to arrange alternate financing so to redeem, or to find a substitute buyer, or to solicit bids. Moreover, both alert the debtor to the date on which he should be concerned to oversee or inquire about any proposed sales.

Despite the straightforward Code language, a few courts insist that the secured creditor provide still further information. For example, one court requires creditors to state explicitly in their notices whether the sale is to be public or private. We see no reason for such a requirement, assuming the contents of the notice are otherwise clearly worded, given that harsh consequences may flow from secured party's failure to send proper notice, and the text of 9-504 adopts a minimalist approach.

J. White & R. Summers, *Uniform Commercial Code* Section 27-12, at 600-01 (3d ed. 1988).

(2) The distinction between private sale and public sale was recognized by the Arkansas Supreme Court in *Barker v. Horn,* 245 Ark. 315, 316, 432 S.W.2d 21, 22 (1968), where the Court states that, although the statute requires notice of the time and place of public sale, only reasonable notification of the time after which a private sale will be made is required. In the treatise, *Uniform Commercial Code,* the authors state that:

Before the creditor can sell or otherwise dispose of the collateral, 9-504(3) requires the creditor to send notice to the debtor.

> The purpose of notice is to give the debtor an opportunity either to discharge the debt and redeem the collateral, to produce another purchaser or to see that the sale is conducted in a commercially reasonable manner. [*Buran Equip. Co. v. H & C Investment Co.*, 142 Cal.App.3d 338, 190 Cal. Rptr. 878, 881 (1983)]
>
> Cases involving notice issues should be resolved with these three purposes in mind.
>
> J. White & R. Summers, *Uniform Commercial Code* Section 27-12, at 598-99 (3d ed. 1988). Accord *Bank of Dover v. Shipley*, 299 Ark. 451, 773 S.W.2d 825 (1989). Here, the automobile in question was not disposed of at public sale, and the circuit court specifically found that it was sold at private sale. It was not necessary that the notice expressly use the term "private sale."
>
> (3) We also disagree with the appellant's argument that the notice is ambiguous. Although it stated that the automobile "may be sold at any time" after November 3, 1986, the clear intent of the notice, taken as a whole, is that attempts would be made to sell the automobile after November 3, 1986. Clearly, the notice sufficiently informed the appellant so that she could adequately protect her interest in the automobile. We hold that this was adequate compliance with Section 4-9-504(3).

The Petitioner's letter of April 8, 1993, fulfilled the three purposes as set forth in *Buran Equip. Co. v. H & C Investment Co.*, 190 Cal. Rptr. 878 (Ct. App. 1983), as best could be accomplished in a post judgment leased equipment setting.

1. The Respondents were given an opportunity to discharge the debt.[5]
2. The Respondents did in fact produce the purchaser who ultimately bought the equipment.
3. The Respondents through the efforts of Greg Spain sought to provide the Petitioner with the best pros-

5. Because this was leased equipment it was not collateral and there was no right of redemption post judgment.

> pects within the area assuring a commercially reasonable sale from the respondents prospective.

The Respondents knew of the default in July 1992 when the Complaint was served, and were given an opportunity to redeem the collateral or bring the account current. App._a. The Respondents were given ample opportunities to find other purchasers. R529a-531a. There was no confusion that there was an "on or after" date of May 10, 1993. Attorney Robert Blum, Counsel for the Respondents, asked for an extension, App. 53a[6], and was actively involved with Gregory Spain in the final sale of the equipment. App. 52a. The equipment was sold to Robert Aul, a purchaser brought to the Petitioner by the Respondents. The Petitioner was able to negotiate better terms than the Respondents had been offered prior to May 10, 1993. R529a. See also letter written by Gregory Spain to Respondents dated April 8, 1993, App. 55a, analyzing the initial proposal of Robert Aul the ultimate purchaser of the equipment. The equipment was sold to Robert Aul for $85,000 as reported to the respondents in Greg Spain's letter of June 8, 1993.

Through the correspondence filed in the Court below there was ample evidence that the respondents were aware of the need to dispose of the leased equipment and through Greg Spain, participating in its disposition by providing the ultimate purchaser. As stated in *Earl of Loveless, Inc. v Gabele,* 2 Cal Rptr. 2d 832, 839 (Cal.App. 1991):

> "Although Gabele did not receive a formal written notice of disposition, it is clear that he was aware of the need to dispose of the collateral and in fact participated in its disposition. Under these circumstances compliance with the statute would have been an idle act; judgment must be affirmed."

Not only did the respondents receive proper notice of the date "on or after" which a private sale of the equipment would take place, they knew of the purchaser's proposed offer.

---

6. Attorney Robert Blum was the attorney for all the Respondents (Lifecare X-Ray Inc. and the personal guarantors of the Lifecare X-Ray Lease) early in the proceedings (App. 47a).

A further letter to the respondents or their attorney would have been an idle act. The Petitioner's conduct complied with the California notice requirements even though compliance was not required under the judgment as registered in Pennsylvania.

By the lower Court erroneous application of California law to the judgment registered in Pennsylvania, your Petitioner has been denied its rights under the full faith and credit principle.

3. The need for this Court's review of this case was stated by Justice (then Professor) Ginsburg twenty-eight years ago:

> "to preserve the benefits of a first judgment, a party must demand full faith and credit for that judgment in the second state. If his demand is rejected, he must pursue the appellate route through a petition for certiorari. Unified treatment of judgments rendered within the United States is fostered by the rule, as it is fostered by the Court's precedents generally, on questions of full faith and credit to the judgments."

Honorable Ruth B. Ginsburg, Judgments in Search of Full Faith and Credit: The Last-In-Time Rule for Conflicting Judgments, 82 HARV. L. rev. 798, 831 (1969).

The California judgment has been acknowledged by Pennsylvania as valid. The Pennsylvania judgment as registered has not been opened or struck. Your Petitioner is now "barred" from enforcement in Pennsylvania. If this court as the impartial arbiter refuses to act, will Pennsylvania's bar of the California judgment automatically become the national solution to the matter in controversy? The Pennsylvania decision is specifically limited by its own terms to Pennsylvania. Permitting Pennsylvania to independently bar enforcement of an admittedly valid judgment does not promote the unified judicial system mandated by Article IV of the Constitution. Without forcing the issue raised by the respondents to be resolved in California, the same issue could be retried in numerous other states. The overriding issue of Full Faith and Credit should be resolved by paramount federal authority and not left to the individual states for additional and potentially

inconsistent decisions. California was a court competent to decide the issue initially and is the proper court to decide any questions relating to the validity of the judgment, particularly when application of California law may be required. The lower court of Pennsylvania acknowledged its own limitations by not having access to the pleadings and documents upon which the judgment was entered. App. 23a. Considerations of finality and repose normally dictate that one trial of an issue is enough. Id. at 798.

If there are any issues relalting to the validy of the judgment or any questions pertaining to notice, they must be decided by the California trial court. To permit each state to decide the validity of the judgment is flatly contrary to the Full Faith and Credit principles of our Nation. This is the only court vested with the power to preserve and unify the judicial system of our Union.

CONCLUSION

For the foregoing reasons the petition for writ of certiorari should be granted.

Respectfully submitted.

David L. Robinson
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Greensburg, PA 15601
(412) 836-4300
PA I.D. #05742

Counsel for Petitioner

December 18, 1997

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Finova Capital Corporation, Successor in Interest to Bell Atlantic-Tricon Leasing Corporation Petitioner	:	No. 255 Western District Allocatur Docket 1997
vs.	:	Petition for Allowance of Appeal from the Superior Court
Robert A. Holst.; Helarion A. Beronilla, Jr.; Charles Chang; Samuel Flannagan; Yahya Fadl; Angel Balcita; Barid B. Jana; Paul Dascani; Gregory Spain; William Hughes; Lifecare X- Ray, Inc. Respondent	:	

ORDER

PER CURIAM

AND NOW, this 19th day of September, 1997, the Petition for Allowance of Appeal is **DENIED.**

A True Copy Candace Y. Fry
as of: September 19, 1997
Attest: /s/ Candance Fry
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX B

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

FINOVA CAPITAL CORPORATION, SUCCESSOR IN INTEREST TO BELL ATLANTIC-TRICON LEASING CORPORATION, *Appellant*	:	
-v-	:	
JAMES E. NICOLETTE; et al.	:	NO. 129 PITTSBURGH, 1996
FINOVA CAPITAL CORPORATION, SUCCESSOR IN INTEREST TO BELL ATLANTIC-TRICON LEASING CORPORATION, *Appellant*	:	
-v-	:	NO. 729
JAMES E. NICOLETTE; et. al.	:	PITTSBURGH, 1996

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of WESTMORELAND County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ Eleanor R. Valecho
DEPUTY PROTHONOTARY

Dated: January 14, 1997

FINOVA CAPITAL CORPORATION, SUCCESSOR IN INTEREST TO BELL ATLANTIC-TRICON LEASING CORPORATION, *Appellant* v. JAMES E. NICOLETTE; FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC. LIFECARE CARDIAC CENTER INC., AND LIFECARE X-RAY INC.	:	IN THE SUPERIOR COURT OF FENNSYLVANIA
	:	No. 00129 Pittsburgh, 1996

Appeal from the Order Dated December 4, 1995, in the Court of Common Pleas of Westmoreland County, Civil Division, at NO. 2616 OF 1993

FINOVA CAPITAL CORPORATION, SUCCESSOR IN INTEREST TO BELL ATLANTIC-TRICON LEASING CORPORATION, *Appellant* v. JAMES E. NICOLETTE; FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES;	:	IN THE SUPERIOR COURT OF PENNSYLVANIA

LIFECARE LABORATORIES, INC. :
LIFECARE CARDIAC CENTER INC., :
AND LIFECARE X-RAY INC. : No. 00729 Pittsburgh, 1996

Appeal from the Order Dated March 26, 1996, in the Court of Common Pleas of Westmoreland County, Civil Division, at NO. 2616 OF 1993

BEFORE: POPOVICH, FORD ELLIOT & HESTER, JJ.

OPINION BY HESTER, J.: FILED: JANUARY 14, 1997

Finova Capital Corporation, successor-in-interest to Bell Atlantic-Tricon Leasing Corporation, appeals the determination of the trial court that it may not collect a deficiency judgment against appellees,[1] Robert A. Holst, Helarion A. Beronilla, Jr., Charles Chang, Samuel Flannagan, Yahya Fadl, Angel Balcita, Barid B. Jana, Paul Dascani, Gregory Spain, William Hughes, and Lifecare X-ray, Inc. We affirm.

Appellant entered into equipment leases in California with appellees for certain medical equipment. When appellees defaulted under the leases, appellant sold the equipment without notifying appellees of the time or place of the sale. It obtained a deficiency judgment following the sale against appellees and sought to enforce it in Pennsylvania.

The matter arises from an action instituted in Orange County, California. In the complaint, appellant alleged breach of lease, breach of guaranties, and other causes of action. The individual appellees herein had guaranteed the leases in question. The complaint was served on appellees during July or August, 1992.

Appellees failed to respond to the complaint, and a default judgment was entered against them on January 26, 1993. On April 7, 1993, appellant entered that judgment pursuant to the Uniform Enforcement of Foreign Judgments Act in the Court of Common Pleas of Westmoreland County.

The January 26, 1993 order provides in relevant part as follows. Appellees Beronilla, Chang, and Flannagan were sub-

1. Some of the named defendents did not defend this action and are not appellees herein.

ject to Equipment Lease No. 2293.01 and had damages in the amount of $54,625.19 and attorney's fees in the amount of $2,438.75 entered against them. The equipment and personal property that was the subject of that lease was ordered to be delivered to appellant. The order then provides that appellant "shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section 9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease No. 2293.01" Order of Court, 1/26/93, at 2-3.

For breach of Equipment Lease Nos. 2773.01, 2773.02, and 2773.03, damages in the amount of $592,213.27 and attorney's fees in the amount of $8,322.13 were entered against Lifecare X-ray, Inc., Beronilla, Fadl, Balcita, Chang, Flannagan, Jana, Dascani, Spain, and Hughes. The court also ordered that the equipment and personal property described in those leases be delivered to appellant and upon delivery, appellant "shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section 9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease Nos. 2773.01, 2773.02, and 2773.03." *Id.* at 4-5.

Appellant sold the equipment which was the subject of the four leases and obtained a deficiency judgment which it sought to execute by this action in Pennsylvania. After numerous proceedings, including an attempt to have the January 26, 1993 order of the California court modified, the decision at issue was entered on May 26, 1996. Therein, the Court of Common Pleas of Westmoreland County determined that the California judgment could not be collected because appellant had failed to give appellees notice of the equipment sales as required by section 9504 of the California Uniform Commercial Code. Appellant appealed this May 26, 1996 order at 729 Pittsburgh 1996. Appeal number 129 Pittsburgh 1996 is from the December 4, 1995 order denying appellant bond as to Lifecare, Beronilla, Fadl, Chang, Flannagan, Jana, Lipana, Dascani, Spain, and Hughes.

Section 9504(3) of the California Commercial Code provides in relevant part, "Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he or she has not signed *after* default a statement renouncing or modifying his or her right to notification of sale, . . . a notice in *writing* of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made." (emphases added). Herein, the trial court concluded that the deficiency judgment obtained by appellant was not valid since appellant had failed to give reasonable notification of its sales of the leased goods as required by the default judgment order mandating that the sales accord with section 9504.

Appellant's first challenge to this decision is rather obtuse. It argues that procedurally, appellees were not permitted to attack the validity of its deficiency judgment with a rule to show cause why the judgment should not be opened. Appellant provides no legal authority for this proposition, other than case law relating to the fact that we must give full faith and credit under the United States Constitution to foreign judgments. We fail to see how the procedural posture of this case is improper. Appellant sold the goods without notifying appellees in advance of the sale and obtained the deficiency judgment based on deficiencies arising after the sales.

This proceeding was appellees' first opportunity to object to a lack of notice. The court accorded full faith and credit to the California order, but it merely noted that under the express provisions of the default order, appellant was required to notify appellees of the sales. The trial court noted that a failure to provide notice of sale in accordance with section 9504 is a defense to a deficiency judgment.

Appellant obtained a default judgment against appellees and the express wording in that default judgment provides that appellant had to give notice of the time and place of the sale of the leased goods in order to obtain a deficiency judgment. Appellant failed to provide such notice. Thus, appellant failed to comply with the order granting default. The trial

court did not permit appellees to raise defenses to the default judgment which appellees should have asserted when the action was instituted in California. The court merely refused to enforce the default judgment because appellant failed to comply with its terms. Appellees' defense is that appellant failed to comply with the mandates of that default judgment, not that it is not liable under the lease agreements. Their defense post-dates the default judgment and relates to failures occurring after default judgment was granted and in violation of the default order. Therefore, the trial court did not violate procedural rules nor did it fail to give full faith and credit to the default judgment entered in California.

Appellant also claims that the trial court did not properly resolve disputed factual matters under Pa.R.Civ.P. 209(b). It claims that it presented deposition evidence that Gregory Spain knew about the sales and acted as an agent for the other guarantors. Without citation to either statutory or case law authority, appellant then posits that "as the respondent appellant is entitled to a presumption it in its favor when the petitioners do not produce clear and convincing evidence to the contrary," Appellant's brief at 25.

We are not aware of any rule of law which requires a trial court to credit deposition testimony in a proceeding involving petition practice. In fact, in all areas where factual issues are to be resolved, the factfinder is permitted to believe or disbelieve whatever evidence it chooses. Appellant certainly has failed to cite to any authority requiring a factfinder to credit evidence merely because it is not contradicted. Furthermore, appellant totally fails to elaborate, through citation to the record on the nature of the notice it gave to Mr. Spain and the nature of the evidence it produced to establish that Mr. Spain was acting as agent for all these individual guarantors. Since appellant has failed to convince us that the trial court's determination on this factual issue was contrary to the law or the evidence, we affirm. *Commonwealth ex rel. Robinson v. Robinson,* 505 Pa. 226, 478 A.2d 800 (1984) (the appellant has the burden to demonstrate the trial court's decree is erroneous due to the evidence or the law); *Hercules v. Jones,* 415 Pa.Su-

per. 449, 609 A.2d 837 (1992) (where appellant presented a position without elaboration or citation to case law, we declined to address phantom argument).

The next issue presented is whether an April 8, 1993 letter appellant sent to appellees' counsel constituted sufficient notice of the sales under section 9504. That letter states in relevant part that appellant "will proceed with reclaiming the equipment on or shortly after May 10, 1993," and that after that time, appellant will "proceed with the sale of the equipment." As the letter does not give the time or the date of the proposed sale and does not indicate whether the sale is public or private, it is insufficient to satisfy the requirements of section 9504. Furthermore, appellant has provided us with no authority interpreting section 9504 to provide that a general notice that property is to be sold in the indefinite future is sufficient to satisfy section 9504 mandates. Accordingly, we affirm the trial court's determination that the April 8, 1993 letter did not satisfy the requirements of section 9504.

In a two-paragraph argument completely lacking in citation to relevant case law or statutory authority, appellant next argues that appellees waived notice of the sale in their guaranty agreement. Appellant indicates that the guaranty agreements are attached to a deposition but does not quote the relevant language in the agreements nor does it indicate where the language is located in the guaranty agreement. We decline to address the merits of this argument. *Fielding v. Fielding*, ___ Pa.Super. ___, ___ A.2d ___ (No. 2992 Philadelphia 1995, filed November 12, 1996) (where appellant failed to cite to any statutory or case law authority to support a one-page argument, the claim was not considered); *Gallagher v. Sheridan*, 445 Pa.Super. 266, 665 A.2d 485 (1995) (claim that is not supported by reference to legal authority is waived). Furthermore, section 9504(3) provides expressly that waiver of notice for a sale must be signed after the default.

Appellant next argues that the default judgment order's requirement that the equipment be sold pursuant to the mandates of section 9504 did not invoke the notice provisions of that section in light of amendments to the section made in 1991.

Thus, we examine the relevant California law. Under section 9504(3), a party must give notice of sale to the debtor before selling collateral. Specifically, notice must include the time and place of any public sale or the time of a private sale. A secured party who fails to give notice loses his right to obtain a deficiency judgment. *Atlas Thrift Co. v. Horan,* 27 Cal.App.3d 999, 104 Cal.Rptr. 315 (1972). There are four exceptions to the notice requirement: if the collateral is perishable; if the collateral threatens to decline in value quickly; if the collateral is usually sold on a recognized market; or if the debtor waived notice in a writing signed after default. Cal. Comm. Code § 9504 (3). The purpose of the notice is to allow the debtors the opportunity to bid at at the sale to protect their rights.

Appellant states that the 1991 amendments to section 9504 changed the holding in *Atlas Thrift.* It relies upon footnote eight of *Canadian Commercial Bank v. Ascher Findley Co.,* 229 Cal.App.3d 1139, 280 Cal.Rptr. 521, 526 (1991) (emphasis in original, footnote omitted), where the court states:

> California Commercial Code section 9504, subdivision 1, provides that, after default, a secured party may sell, lease, or otherwise dispose of any or all of the collateral securing the indebtedness. Following the disposition of the collateral, the debtor is liable for any deficiency. (*Id.* at subd. 2.) Section 9504 requires that notice of the disposition of the collateral be given to the debtor, and that any such disposition be conducted in a commercially reasonable manner. (*Id.* at subd. 3.) A commercially reasonable disposition is presumed to be in good faith and at the greatest possible market rate. (*Security Pacific National Bank v. Geernaert* (1988) 199 Cal.App.3d 1425, 1431, 245 Cal.Rptr. 712.) The requirements of section 9504 are strictly construed. "If the secured creditor wishes a deficiency judgment he must obey the law. If he does not obey the law, he may not have his deficiency judgment." (*Atlas Thrift Co. v. Horan* (1972) 27 Cal.App.3d 999, 1009, 104 Cal.Rptr. 315). Failure to comply with either the

notice requirement *or* the requirement of commercial reasonableness will act as an absolute bar to a deficiency judgment. *Crocker National Bank v. Emerald* (1990) 221 Cal.App.3d 852, 270 Cal.Rptr. 699.

In *Canadian Commercial Bank* at footnote eight, the court discusses the notice requirement of section 9504 and the absolute bar rule. First, the court states that not all jurisdictions have adopted the "absolute bar rule" of *Atlas Thrift.* Second, the court notes the 1991 amendments to section 9504 allow the abandonment of the "absolute bar rule" of *Atlas Thrift* only in certain specific instances. The amended section 9504(2) begins with the phrase "if the secured party has provided notice to the debtor pursuant to subdivision (3), if so required, but has not proceeded in a commercially reasonable manner . . ." However, the case at issue is *not* a case where the secured party "has provided notice to the debtor pursuant to subdivision (3)," and therefore appellant cannot rely on this amended subdivision. Indeed, the court in *Canadian National Bank* states that "the absolute bar rule continues to be applicable in those instances in which notice is not given to the debtor." *Id.*, 280 Cal.Rptr. 521, 527 n. 8. The 1991 amendment to section 9504 provides for certain instances where the "absolute bar rule" will be abandoned. That instance is only where the secured party has given the debtor notice pursuant to section 9504(3). In the present action, appellant did not give notice to the debtor, and the amended language is irrelevant to the facts of this case.

In the *Earl of Loveless, Inc. v. Gabele,* 2 Cal.App.4th 27, 2 Cal.Rptr.2d 829 (1991), a post *Canadian Commercial Bank* and post 1991 amendments case, the main issue before the court was whether a debtor could waive his right to formal, written notice of the disposition of collateral. Before deciding the waiver question, the court restated the position of California law as follows:

"Notice to the debtor is the mechanism that the Legislature and the drafters of the Uniform Commercial Code chose to ensure that sales of collateral are conducted in a commercially reasonable fashion. Notice serves this pur-

> pose by giving the debtor an opportunity to monitor the sale to ensure its commercial reasonableness. The right to a deficiency judgment is conditional and depends on strict compliance with the statutory requirements. As the court stated in *Atlas Thrift Co. v. Horan* (1972) 27 Cal.App.3d 999, 1009, 104 Cal.Rptr. 315 'the rule and requirement are simple. If the secured creditor wishes a deficiency judgment he must obey the law. If he does not obey the law, he may not have his deficiency judgment.' " (*Backes v. Village Corner, Inc.* (1987) 197 Cal.App.3d 209, 215-216, 242 Cal.Rptr. 716; citations omitted.)

Id., 2 Cal.Rptr.2d. at 831.

The court in *Loveless* went on to state that in California, "failure to comply with the notice requirement precludes the secured party from recovering a deficiency judgment against the 'debtor.' " *Id.*

Thus, California law remains clear regarding notice to a debtor of the sale of collateral by a secured party. Section 9504(3) requires that written notice be given by the secured party to the debtor of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. In the present case, appellant was expressly ordered to comply with section 9504, which includes the notice provisions of section 9504(3). This notice requirement is to be strictly construed and failure to comply with it will act as an absolute bar to a deficiency judgment under California law. This rule of law has not been changed in any manner by the 1991 amendments to section 9504. Thus, the deficiency judgments are not enforceable under California law.

Appellant also suggests that this transaction was governed by article two of the Uniform Commercial Code and therefore, that article nine was not applicable. In this respect, we note the following. Appellant attempted to amend the default judgment order to eliminate the section 9504 notice requirements. The California court refused to do so. The trial court herein rejected this argument, concluding that appellant

elected to proceed under section 9504 and is bound by that decision. We do not disagree with this logic.

Finally, since the deficiency judgments are not valid, we agree that bond properly was denied.

Orders affirmed.

APPENDIX C

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

FINOVA CAPITAL CORPORATION, SUCCESSOR IN INTEREST TO BELL ATLANTIC-TRICON LEASING CORPORATION,	:	
Plaintiff,	:	
	:	No. 2616 of 1993
vs.	:	
JAMES E. NICOLETTE; FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN: JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC.; LIFECARE X-RAY, INC.,	:	
Defendants	:	

OPINION

This matter comes before the Court upon Defendants Beronilla, Jr., Chang, Flannagan, Fadl, Balcita, Jana, Dascani, Spain, Lipana, Lifecare X-Ray, Inc., and Hughes' Petition to Open and/or Strike Judgment.

The unusual and extended procedural history in this matter requires an overview. On January 26, 1993, the Honorable David H. Brickner of the Superior Court of the State of California for the County of Orange entered a default judgment in favor of Plaintiff Bell Atlantic Tricon Leasing Corporation and against the various defendants. The default judgment was based on alleged breaches of lease agreements entered into between Plaintiff and Defendants. Additionally, some Defendants were sued as guarantors on the leases between Plaintiff and corporate Defendants. In addition to damage amounts

assessed, Judge Brickner ordered that certain property be delivered to Plaintiff. The order, in referring to each of the four leases and defendants liable thereon, stated that "[u]pon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section 9504." On April 7, 1993, Plaintiff transferred the judgment to Westmoreland County pursuant to the Uniform Enforcement of Foreign Judgments Act, 42 Pa. C.S. §4306.

On April 8, 1993, Counsel for Plaintiff sent a letter to Defendants Beronilla, Jr., Fadl, Chang, Flanagan, Jana, Lipana, Dascani, Spain, and Hughes, notifying them of the transferred judgment and informing them of proposed future courses of action. On February 10, 1994, Plaintiff served Interrogatories in Aid of Execution upon the Defendants, notifying them that certain property had been sold or re-leased and that a deficiency existed. In March of 1994, Defendants initiated this action and requested that the Court enter a Rule to Show Cause as to why the judgment should not be opened or stricken.

Defendants have argued throughout these proceedings that they cannot be held liable for any deficiency judgement under the "Absolute Bar Rule" followed in California because the Plaintiff disposed of the collateral without providing proper written notice as required under 9504 of the California Commercial Code and mandated by Judge Brickner's Order. Plaintiff has maintained that Judge Brickner's Order only required a commercially reasonable sale. Further, Plaintiff has suggested that the 1991 amendments to California Commercial Code Section 9504 indicate the abandonment of the "Absolute Bar Rule" in California.

This Court has already issued a number of opinions and orders in this matter. On May 19, 1994, this Court determined that a rule to show cause why the judgment should not be opened or stricken should be issued upon Plaintiff. Additionally, Plaintiff's motion for a demurrer was denied. On March 2, 1995, in response to a submission of the parties, this Court addressed the issue of whether the notice requirements of the

California Uniform Commercial Code had any effect upon the judgment transferred to Pennsylvania. It was determined that the notice requirements of California Uniform Commercial Code §9504 did govern the California Order and that this Court was bound to accord full faith and credit to the provisions of §9504.[1] This Court denied Plaintiff's Motion for Reconsideration of this issue. A rule to show cause was again issued against Plaintiff after an amended judgment was entered against Defendant Hughes.

As mentioned above, in bringing this Petition, Defendants have asked the Court to strike or open the original January 26, 1993 judgment of the Superior Court of California. Defendants suggest that the only issue left before the Court is whether Plaintiff complied with the notice requirements of §9504 of the California Uniform Commercial Code.

Under the Pennsylvania Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S.A. §4306, any foreign judgment properly filed in this state must be afforded full faith and credit unless an overriding reason, such as lack of personal jurisdiction or due process, can be shown to exist. *Tandy Computer Leasing v. DeMarco,* 564 A.2d 1299, 1302 (Pa.Super. 1989), citing *Everson v. Everson,* 400 A.2d 877, 891-92 (1979), *aff'd and order modified on other qrds.,* 431 A.2d 889 (1981). No lack of personal jurisdiction or due process in conjunction with the original California judgment has been evidenced.

To successfully open a judgment in Pennsylvania, a petitioner "must show that (1) the petition to open was filed promptly, (2) the failure to act on the original complaint can be reasonably explained, and (3) a meritorious defense to the underlying claim exists." *Commonwealth, Dept. of Transp. v. Nemeth,* 442 A.2d 689, 691 (1982), *citing Kennedy v. Frank F. Black, Jr., Inc.,* 424 A.2d 1250 (1981).

Plaintiff argues that Defendants have not satisfied the requirements necessary to allow this Court to open the judg-

1. In the Opinion, this Court also noted that regardless of whether the equipment leases were security interests or leases, the plain language of Judge Brickner's Order required adherence to the requirements of California Uniform Commercial Code §9504.

ment in this matter. First, Plaintiff argues that Defendants waited 1½ years to bring this Petition to Open Judgment. An examination of the procedural history, however, indicates that the petition was filed soon after receiving the Interrogatories in Aid of Execution. Thus, although the basis of the Petition does not fully address the merits of the original judgment, the Court finds that the petition is not invalid based on the time of its filing. Even granting this latitude, however, Defendants did not provide a reason as to why they did not respond to a problem with the original complaint; this is presumably because the gravamen of Defendant's Petition concerns the lack of notice before the sale or re-lease of the equipment at issue. This argument, based on §9504, only arose after the judgment was entered and transferred to Westmoreland County and, specifically, after the sale was completed.

Defendants have argued that they were not properly subject to the jurisdiction of the California Courts. No support for this contention was provided to the Court. From the record, it appears that service of the California Complaint was made on all Defendants personally or by certified mail. Further, the leases and guarantor agreements apparently contained a choice of law provision mandating that they were to be construed under California Law. Additionally, and perhaps most importantly, no challenge to the existence of a default on the equipment leases was alleged and no responsive pleading was filed in response to Plaintiff's Complaint.

The striking of a judgment may occur if defects are apparent on the face of the judgment. No such defects are apparent. Moreover, as the judgments have already been executed upon, the Court can not strike the judgments at this juncture.

Therefore, even considering the liberal policy behind opening or striking judgments, the Court has not been provided with a valid defense to the judgment that would allow it to disturb Judge Brickner's original Order granting Plaintiff's substantive default judgment against the various defendants.

Notwithstanding the above determinations, it is clear that in asking the Court to strike or open the original judgment, the Defendants are, in fact, seeking a means of preventing

Plaintiff from collecting a deficiency judgment asserted against them. Thus, the question arises as to whether the possibility of a deficiency judgment exists in this matter. In answering this question, it is important to recognize that the §9504 defense governs a secured creditor's entitlement to deficiency judgments as opposed to an original grant of default judgment against a debtor. This issue has been exhaustively briefed by the parties.

Both lessors and secured creditors have cumulative rights and remedies in cases of default. *See* Cal. Uniform Com. Code §§10501; §9-501(1). Here, Plaintiff elected to pursue a judgment based upon default of the lease agreements.[2] Pursuant to Judge Brickner's Order, Plaintiff then repossessed the equipment and personal property that had been the subject of the agreements. At this juncture, California law may not have required Plaintiff to conform to strict notice requirements regarding the sale of the property subject to the leases.[3] However, Plaintiff, as scrivener of the proposed Order before Judge Brickner, specifically incorporated the commercial reasonableness requirements of §9504 in the Order. Admittedly, Plaintiff has provided an affidavit stating that the drafter's (Plaintiff's) intention in incorporating the §9504 language into the Order was to merely provide proper credit to the Defendants after the sale of collateral. Nonetheless, when the Plain-

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2. While a thorough examination of the record was conducted, the Court did not uncover a copy of either the lease agreements or the guarantor agreements that existed between these parties. Plaintiff has contended that the equipment was leased to the Defendants. This is stated to acknowledge that the Court does not have before it remedies or notice requirements specifically provided for in the leases or the guarantor agreements.

3. Under California Uniform Commercial Code §10501(c), which governs leases, the party "seeking enforcement may reduce the claim to judgment." Under §10502, a creditor is not required to provide notice of default or steps taken to remedy the default. *See* Official Code Comments to §10502. Again, the court was not provided with a copy of the lease or guarantor agreements. Even if the agreements were subject to Article 9 through the inclusion of the §9504 language, which governs security interests in collateral, a judicial sale following judgment, execution, and levy is not governed by the Commercial Code. *See* California Uniform Commercial Code, §9501(I), Official Comment 6.

tiff undertook to repossess the equipment and collateral pursuant to the California Court order, it subjected itself to the restraints of §9504 when conducting a sale.[4] Without this language, it appears that Article 2A (Article 10 in California) and the specific provisions of the lease agreements would have governed default remedies. However, as mentioned, this Court has already determined that it is obliged to give full faith and credit to the California order, including the provisions of §9504.

Thus, the issue before the Court remains whether the Defendants received proper notice of the sale of collateral as required by §9504 of the California Uniform Commercial Code.

With respect to a creditor's entitlement to a deficiency judgment, California follows the "Absolute Bar Rule," which was established in *Atlas Thrift v. Horan,* 27 Cal.App.3d 999, 1008, 104 Cal.Rptr. 315, 321 (1972). The *Atlas* Court determined that a secured creditor must strictly obey the requirements of §9504 in order to obtain a deficiency judgment. *Id.* The California Courts have determined that the failure to comply with the notice requirement or the requirement to conduct a sale in a commercially reasonable manner will bar a deficiency judgment. *Canadian Com. Bank v. Ascher Findley Co.,* 229 Cal.App.3d., 1139, 1149, 280 Cal.Rept. 521, 526 (1991).

Plaintiff argues that the 1991 Amendments to §9504 indicate an abandonment of the Absolute Bar Rule as it pertains to selling the collateral in a commercially reasonable manner. Specifically, Plaintiff contends that because Judge Brickner's Order only imposed a commercially reasonable restriction on the sale, and the absolute bar rule has been limited as to com-

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4. In his December 15, 1995 Notice of Ruling, Judge Brickner noted that the deletion of the language pertaining to §9504 in his January 23, 1993 Order, which had been requested by Plaintiff, would rise to more than a clerical error. Further, he stated that "the judgment language itself, drafted by the plaintiff, bestows a right upon the defaulted defendants. The nature and extent of this right is not for the court to determine, suffice it to say that it is potentially of some value and thus cannot be taken from them under the banner of 'clerical error change.' "

mercial reasonableness, the deficiencies are not barred. Plaintiff also argues that all California cases cited that invoke the Absolute Bar Rule involve pre-judgment dispositions of collateral; whereas, in this matter, a default judgment had already been entered before a sale was made. Additionally, Plaintiff argues that Defendants waived notice of the sale.

Defendants contend that notice was inadequate and that the Plaintiff is therefore barred from a deficiency judgment. Defendants also maintain that the absolute bar rule still exists in cases where the notice requirement has not been followed. Further, Defendants argue that they made no intentional or knowing waiver of their right to notice.

The *Canadian* Court, mentioned above, addressed the issue of the 1991 amendments of §9504 and its effect on the Absolute Bar Rule in California. The court stated that although the amendments constituted the abandonment of the rule in certain instances, "it continues to be applicable in those instances in which notice is not given to the debtor." *Id.* at 527, n. 8. Thus, while notice itself is clearly not determinative of a "commercially reasonable" sale of collateral, a lack thereof still prevents a finding of commercial reasonableness in California.

Plaintiff's argument regarding the use of the Absolute Bar Rule as an affirmative defense in pre-judgment proceedings is duly noted. Nonetheless, Judge Brickner's December 15, 1995 Notice of Ruling determined that the judgment language bestowed a right upon the defaulted defendants.[5] As mentioned above, when Plaintiff decided to repossess the collateral in order to conduct a sale in accordance with §9504, the safeguards of the California Uniform Commercial Code potentially came into play for the Defendants.

The question of notice primarily surrounds the April 8, 1993 letter sent to Defendants by Plaintiff's counsel. Defendants were sent similar letters. The following is an example:

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5. See footnote 4, *supra.*

Dear Dr. Spain:

You have received or will be receiving a notice that a judgment has been entered against you in the above-captioned matter. I am attorney for Bell Atlantic-Tricon Leasing Corporation here in Westmoreland County. This judgment was originally entered against you in California and has now been transferred to Westmoreland County.

The judgment has two components. First, a monetary judgment has been entered against you in the amount of $600,653.40. Payments totalling $7,274.53 have been received since entry of the judgment. Second, the Order requires that the equipment be returned to Bell Atlantic-Tricon so that it can be sold in a commercially reasonable manner. Once the equipment is sold, the amount received for the equipment less the expenses for selling the equipment will be deducted from the amount owed to Bell Atlantic-Tricon. If the net selling price is not sufficient to cover the amount due, you are personally liable for the remaining balance.

As you know, there are several defendants on each judgment in this matter. Each defendant is individually responsible for the total amount due. This does not mean that Bell Atlantic-Tricon is entitled to more than the total amount of the judgment, but it does mean that each defendant is potentially liable for up to the full amount until such time as the entire balance is paid off.

I have discussed this matter with Attorney Blum, who is representing some of the defendants in this matter. I have also spoken to at least one of the defendants individually. It is my understanding that several alternative plans are being considered to privately sell this equipment in an effort to obtain the best price possible for the equipment.

These Leases have been in default for a considerable period of time and I am advising you that

Bell Atlantic-Tricon will proceed with reclaiming the equipment on or shortly after May 10, 1993. If a well-defined and documented plan is not in place by that time, Bell Atlantic-Tricon will have no other alternative but to proceed with the sale of the equipment and enforcement of the judgment for any remaining balance that is due.

Very truly your,

FISHER, LONG, & RIGONE

Plaintiff contends that the above letter contains sufficient notice that a private sale of equipment would occur on or after May 10, 1993 if other plans had not been established by the Defendants. Plaintiff also asserts that as Defendant Spain sent a letter concerning a possible sale to all of the guarantors, the Defendants were aware of the status of the sale. Additionally, Plaintiff argues that knowledge of the Defendants regarding the need to sell the equipments suggests a waiver of the notice requirement.

The Defendants maintain that the notice was inadequate to put them on notice regarding a sale. They argue that the letter did not specifically set forth an impending sale as required by §9504.

As discussed above, a lack of proper notice will act as an absolute bar to a deficiency judgment. In this matter, the letter itself was inadequate to establish notice. Although it discussed private sales set up by the Defendants, it did not specify what type of sale Plaintiff would conduct after May 10th should the equipment be repossessed. If, for example, a public sale was to be held, §9504(3) requires reasonable notice of time and place. Likewise under §9504(3), a private sale requires reasonable notification of the time after which any private sale or other intended disposition is to be made. Presumably, the Defendants could have created a strategy based on whether the sale was to be public or private. As there is an ambiguity as to type of sale and corresponding notice

required,[6] Defendants should not be penalized as the purpose of such notice is to ensure a fair sale is conducted.

Additionally, to be effective, an express waiver of notice must be in writing and after default. ANDERSON, UNIFORM COMMERCIAL CODE, §9-504:165. No such waiver is present here.

In support of its position that Defendants nevertheless waived the notice requirement, Plaintiff directs the Court's attention to *Earl of Loveless, Inc. v. Gabele*, 2 Cal.Rptr.2d 829 (Cal.App.2.Dist. 1991). In *Earl of Loveless*, the court determined that an initial seller did not owe an intermediate seller formal written notice of collateral disposition after a waiver by the latter. The court found that Gabele, the intermediate seller, had waived his right to formal written notice before disposition of the collateral because he had undertaken to sell the collateral on behalf of Loveless, conferred with him about the sales, and was clearly aware of the timely need to dispose of the collateral. *Id.* at 833. In the case at bar, Plaintiff alleges that the Defendants were aware of the circumstances surrounding the sale of certain leased equipment and that Defendant Spain even approved the private sale of some equipment.

It is true that Defendants had been apprised of negotiations regarding liquidation of at least some of the various assets through correspondence of Defendant Spain. Further, the Court recognizes that *Earl of Loveless* approved a finding of implied waiver in California depending on the evidence presented. *Id.* The purpose of the Commercial Code, however, is to ensure the proper sales of assets after default. The Code requires an express waiver after default. Because the provisions of §9504 have been specifically applied to this matter, the Plaintiff must be bound by the requirement of express waiver in the case at bar. Moreover, there is no indication that continued communications were maintained from Plaintiff to all Defendants after the April 8th letter to apprise Defendants of,

6. The May 10th date was supposed to be the date of reclamation.

in the case of a private sale, the date on or after which sales were to occur. Of course, even more information is required for a public sale.

Judge Brickner's Order imposed the requirements of §9504, including notice, upon the Plaintiff with respect to selling the collateral in this matter. By choosing to proceed with the sale of the leased equipment without notice, the Plaintiff forfeited its right to seek a deficiency judgment against the Defendants under 9504.

In making this determination, however, the Court is concerned that the leases and guarantor agreements were not in evidence before the Court. Factual issues may exist as to whether the parties entered into these agreements anticipating necessary compliance with the provisions of Article 9. The parties provided this Court with briefs submitted to Judge Brickner concerning an application to correct a clerical error. While Plaintiff's counsel contends that by the terms of Lease Nos. 2928 and 2983, the applicable defendant lessees stipulated that the documents were Finance Leases, and that Lease No. 2773 is identical in all respects to these leases except for the parties and equipment involved, Defendants' California counsel contends that the leases were in fact finance agreements subject to Article 9. This question of interpretation as it may affect deficiency judgments is properly before the California Court. Further, the lease and guarantor agreements themselves may contain important information regarding default rights notwithstanding the §9504 language. Therefore, notwithstanding its finding as to the application of §9504 in this matter, the Court will grant the parties leave to apply to the California Court to clarify the original order entered on January 26, 1993, insofar as the inclusion of language requiring compliance with §9504 affects the ability to collect deficiency judgments in this matter.

The Court will enter the following Order:

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

FINOVA CAPITAL CORPORATION, SUCCESSOR IN INTEREST TO BELL ATLANTIC-TRICON LEASING CORPORATION, Plaintiff,	:	No. 2616 of 1993
vs.	:	
JAMES E. NICOLETTE; FRANK SANTA-MARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; JOHN R. KENNER-DELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC. LIFECARE CARDIAC CENTER, INC.; and LIFECARE X-RAY, INC., Defendants.	:	

ORDER OF COURT

AND NOW, to wit, this 26th day of March, 1996, the Defendant's Petition to Open and or Strike Judgment is denied for the reasons expressed above in the attached Opinion.

The Court having found that Plaintiff has failed to comply with the notice provisions of §9504 of the California Uniform Commercial Code as required by the original California Order dated January 26, 1993; Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule.

The order of this Court is stayed for a period of 90 days to allow parties to seek such further clarification as may be

required with regard to the January 23, 1993 Order of the California Court.

BY THE COURT

/s/ Bernard F. Scherer

Bernard F. Scherer, P.J.

ATTEST:

/s/ Ron Diehl

Prothonotary

APPENDIX D

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 17

Court convened at _____ M December 20, 1995, present Hon. DAVID H. BRICKNER, Judge: C. Neuenschwander, Deputy Clerk; NONE, Baliff; NONE, Reporter; and the following proceedings were had:

69 16 93 BELL ATLANTIC TRICON VS NICOLLETTE, ETC. ETAL

MOTION TO RECONSIDER OR TO VACATE JUDGMENT

No appearances. The Court having taken this matter under submission on 12/15/95, now rules as follows, a copy of which is attached hereto, and incorporated as though set forth fully at length.

ENTERED 12/20/95

SUCHAMN, GALFIN & PASSON
18101 Von Karman Ave. #1400
Irvine, CA 92715-1007

CALL, CLAYTON & JENSEN
610 Newport Center Drive #700
Newport Beach, CA 92660

CLERK'S CERTIFICATE OF MAILING (CCP 1013a) — I certify I am not a party to this cause, over 18, and a copy of this document was mailed first class postage prepaid in a sealed envelope addressed as shown listed. Mailing and execution of this certificate occurred on December 20, 1996 at Santa Ana, California. ALAN SLATER, CLERK, by HARRIET L. DOBSON, Deputy.

FILED
ORANGE COUNTY SUPERIOR COURT
DECEMBER 15, 1995
ALAN SLATER, Executive Officer/Clerk
C. Neuenschwander

Notice of Ruling

Bell Atlantic Tricon v Nicollette etc et al

December 15, 1995

69 16 93

The court finds the amendment to the judgment, made pursuant to plaintiff's ex parte application, is void, as it changes more than a "clerical error." Assuming plaintiff is correct in the application of UCC 9504, nonetheless, the judgment language its self, drafted by the plaintiff, bestows a right upon the defaulted defendants. The nature and extent of this right is not for the court to determine, suffice it to say that it is potentially of some value and thus cannot be taken from them under the banner of "clerical error change."

As to the issue of the ex parte its self, and the question of whether a misrepresentation was made to the court respecting the Pennsylvania proceedings and the effect thereof, the court will issue further orders in the near future.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ORANGE

Dept. 17

Court Convened at _____ M MONDAY 6-24 1996, present Hon. DAVID H. BRICKNER, Judge: Nancy Parker, Deputy Clerk; NONE, Bailiff; NONE Reporter; and the following proceedings were had:

69-16-93 BELL ATLANTIC Vs NICOLLETTE

No appearances. The Court having taken this matter under submission on 6-14-96, now rules as follows, a copy of which is attached hereto, and incorporated as though set forth fully at length. Clerk to give notice to plaintiff; plaintiff to give notice to other parties.

ENTERED: 6-24-96

TED GALFIN- 18101 VON KARMAN AVENUE, #1400-IRVINE, CA 92715

CLERK'S CERTIFICATE OF MAILING (CCP 1013a) — I certify I am not a party to this cause, over 18, and a copy of this document was mailed first class postage prepaid in a sealed envelope addressed as shown listed. Mailing and execution of this certificate occurred on 6-25-96 at Santa Ana, California.

ALAN SLATER, CLERK, by N. Parker, Deputy.

FILED
ORANGE COUNTY SUPERIOR COURT
JUNE 24, 1996
ALAN SLATER, Executive Officer/Clerk
BY N. PARKER

Notice of Ruling

Bell Atlantic v Nicollette et al

June 24, 1996

The four motions of plaintiff; "Confirming Compliance;" "Confirming Enforceability;" "Determining Amount Due;" and "Clarifying Status of Parties" are all denied. They are without merit, and call upon the court to make findings which are both advisory and beyond its jurisdiction.

Regarding the suggestion of the Pennsylvania court, I have read the thoughtful and thorough opinion of Judge Sherer. In his final paragraph, he suggests there may be important details in the agreements themselves regarding the remedies of the parties in case of default. In this regard, I have no dispute with Judge Sherer, who may well be correct in his suspicions. However, from the perspective of the California court, this is a case whose trial has concluded, with the rights and duties of the parties now described with finality in the *judgment*. Thus, a revisitation of the contractual provisions would be in inappropriate.

Concerning the issue of sanctions, while the "motions" above are virtually unknown in the law, the moving party *did* have the closing remarks of Judge Sherer, which would clothe the moving party in at least a *colorably* good faith argument. Thus, the motion for sanctions is denied.

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BELL ATLANTIC-TRICON LEASING CORPORATION,	:	
Plaintiff,	:	
vs.	:	No. 2616 of 1993
JAMES E. NICOLLETTE; FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN: JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC.; LIFECARE X-RAY, INC.,	:	
Defendants	:	

COUNSEL OF RECORD:

Attorney for Bell Atlantic-Tricon
Leasing Corporation
David L. Robinson
I.D. # 05742

FISHER, LONG & RIGONE
101 West Pittsburgh Street
Greensburg, PA 15601
Telephone: (412) 834-9300

**ENTRY OF JUDGMENT
PURSUANT TO
UNIFORM ENFORCEMENT OF FOREIGN
JUDGMENTS ACT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

BELL ATLANTIC-TRICON LEASING CORPORATION,	:	
Plaintiff	:	
vs.	:	No. 69 16 93
JAMES E. NICOLLETTE; FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC.; LIFECARE X-RAY, INC.,	:	
Defendants	:	

TO THE PROTHONOTARY:

In accordance with the provisions of the Uniform Enforcement of Foreign Judgments Act (UEFJA), 42 Pa. C.S. Section 4306, enter judgment in favor of Bell Atlantic-Tricon Leasing Corporation and against the following defendants:

James E. Nicollette
Frank Santamaria
Frank V. Maida
Helarion A. Beronilla, Jr.
Narcisa Lipana
Charles Chang
Samuel Flannagan
John R. Kennerdell

Dominic W. Dileo
Yahya Fadl
Angel Balcita
Barid B. Jana
Paul Dascani
Gregory Spain
William Hughes
Lifecare Laboratories, Inc.
Lifecare Cardiac Center, Inc.
Lifecare X-ray, Inc.

Attached hereto, marked Exhibit "A" and incorporated herein by reference is a duly certified copy of the judgment entered by the Superior Court of the State of California in and for the County of Orange at Case No. 69 16 93, which judgment is entitled to full faith in credit under the United States Constitution.

Attached hereto as Exhibit "B" and incorporated herein by reference is a duly attested copy of all of docket entries affecting said judgment.

Respectfully submitted,

FISHER, LONG & RIGONE

By: /s/ David Robinson
David Robinson

EXHIBIT "A"

SUMMARY OF THE JUDGMENT

The plaintiff, Bell Atlantic-Tricon Leasing Corporation, is entering judgment in Westmoreland County against the defendants as follows:

Counts 9-12

Frank Santamaria, Frank V. Maida, Helarion A. Beronilla, Jr., Narcisa Lipan, Charles Chang, Samuel Flannagan and each of them jointly and severly as follows:

Damages	$54,625.19
Attorneys Fees	2,438.75
Total Due	$57,063.94
Post-Judgment Payments:	
Lease No. 2293.01	1,574.10

There is also an Order that the equipment shown on Lease No. 2293.01 be delivered to the plaintiff to be sold in a commerically reasonable manner and the net proceeds applied to the unpaid balance due on the judgment entered.

Counts 13-17

Lifecare Laboratories Inc., James E. Nicollette, Frank V. Maida, Frank Santamaria and each of them jointly and severly as follows:

Damages	$252,039.23
Attorney's Fees	4,920.39
Total Due	$256,959.62
Post-Judgment Payments:	
Lease No. 2983.01	4,678.75

There is also an Order that the equipment shown on Lease No. 2983.01 be delivered to the plaintiff to be sold in a commercially reasonable manner and the net proceeds applied to the unpaid balance due on the judgment entered.

Counts 18-22

Lifecare Cardiac Center, Inc., John R. Kennerdell, Dominic W. Dileo, Frank V. Maida and each of them jointly and severly as follows:

Damages	$276,898.04
Attorney's Fees	5,168.98
Total Due	$282,067.02

There is also an Order that the equipment shown on Lease No. 2928.01 be delivered to the plaintiff to be sold in a commercially reasonable manner and the net proceeds applied to the unpaid balance due on the judgment entered.

Counts 23-27

Lifecare X-Ray, Inc. Frank V. Madia, James E. Nicollette, Frank Santamaria, Helarion A. Beronilla, Jr., Yahya Fadl, Angel Balcita, Charles Chang, Samuel Flannagan, Barid B. Jana, Narcisa Lipana, Paul Dascani, Gregory Spain, William Hughes and each of them jointly and severly as follows:

Damages	$592,213.27
Attorneys' Fees	8,322.13
Total Due	$600,535.40
Post-Judgment Payments:	
Lease No. 2773.02	4,617.13
Lease No. 2773.03	2,657.40

There is also an Order that the equipment shown on Lease Nos. 2773.01, 2773.02 and 2773.03 be delivered to the plaintiff to be sold in a commercially reasonable manner and the net proceeds applied to the unpaid balance due on the judgment entered.

And it is further ordered adjudged and decreed at the plaintiff have and recover from the defendants and each of them costs and disbursements in the sum of $602.41 together with interest on the aforesaid judgments as provided by law.

Dated: April 7, 1993

TED A. GALFIN, ESQUIRE, #95142
KENNETH D. PASSON, ESQUIRE, #82622
SUCHMAN, GALFIN & PASSON
Attorneys at Law
18101 Von Karman Avenue
Suite 1400
Irvine, California 92715
(714) 752-2444

Attorneys For Plaintiff
BELL ATLANTIC-TRICON LEASING CORPORATION

FILED JAN 29 1993
GARY L. GRANVILLE, County Clerk
By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

BELL ATLANTIC-TRICON LEASING CORPORATION,	:	CASE NO. 69 16 93
	:	
	:	JUDGMENT BY DEFAULT
Plaintiff,	:	BY COURT
vs.	:	
	:	
JAMES E. NICOLLETTE; FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC.; LIFECARE X-RAY, INC.,	:	Judge David H. Brickner Department 17
Defendants.	:	

This cause came on for hearing on January 26, 1993, before the Honorable David H. Brickner, Judge presiding in Department 17 of the above-entitled court. Suchman, Galfin & Passon and Ted A. Galfin, Esquire, appeared for Plaintiff BELL ATLANTIC TRICON LEASING CORPORATION, hereinafter referred to as "Plaintiff".

It appearing that Defendants JAMES E. NICOLLETTE, FRANK SANTAMARIA, FRANK V. MAIDA, HELARION A. BERONILLA, JR., NARCISA LIPANA, CHARLES CHANG, SAMUEL FLANNAGAN, JOHN R. KENNERDELL, DOMINIC W. DILEO, YAHYA FADL, ANGEL BALCITA, BARID B. JANA, PAUL DASCANI, GREGORY SPAIN, WILLIAM HUGHES, LIFECARE LABORATORIES, INC., LIFECARE CARDIAC CENTER, INC., LIFECARE X-RAY, INC., and each of them, having been regularly served with process, having failed to appear and answer Plaintiff's Complaint filed herein, and the default of such Defendants having been duly entered; on application of Plaintiff to the Court and after having heard and considered the evidence,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, on the Ninth through Twelfth Causes of Action of Plaintiff's Complaint, Plaintiff have and recover Judgment as against Defendants FRANK SANTAMARIA, FRANK V. MAIDA, HELARION A. BERONILLA, JR., NARCISA LIPANA, CHARLES CHANG, SAMUEL FLANNAGAN, and each of them, jointly and severally, as follows:

1. For damages in the sum of $54,625.19;

2. For attorneys' fees in the sum of $2,438.75;

3. For an order that the items of equipment and personal property described in that certain Equipment Lease No. 2293.01, a copy of which is attached to Plaintiff's Complaint, marked Exhibit "3" and incorporated herein by reference, be delivered to Plaintiff. Upon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section 9504 and the net proceeds of the sale or other disposition shall

be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease No. 2293.01.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, on the Thirteenth through Seventeenth Causes of Action of Plaintiff's Complaint, Plaintiff have and recover Judgment as against Defendants LIFECARE LABORATORIES, INC., JAMES E. NICOLLETTE, FRANK V. MAIDA, FRANK SANTAMARIA, and each of them, jointly and severally, as follows:

1. For damages in the sum of $252,039.23;

2. For attorneys' fees in the sum of $4,920.39;

3. For an order that the items of equipment and personal property described in that certain Equipment Lease No. 2983.01, a copy of which is attached to Plaintiff's Complaint, marked Exhibit "4" and incorporated herein by reference, be delivered to Plaintiff. Upon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section 9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease No. 2983.01.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, on the Eighteenth through Twenty-Second Causes of Action of Plaintiff's Complaint, Plaintiff have and recover Judgment as against Defendants LIFECARE CARDIAC CENTER, INC., JOHN R. KENNERDELL, DOMINIC W. DILEO, FRANK V. MAIDA, and each of them, jointly and severally, as follows:

1. For damages in the sum of $276,898.04;

2. For attorneys' fees in the sum of $5,168.98;

3. For an order that the items of equipment and personal property described in that certain Equipment Lease No. 2928.01, a copy of which is attached to Plaintiff's Complaint, marked Exhibit "8" and incorporated herein by reference, be delivered to Plaintiff. Upon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section

9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease No. 2928.01.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, on the Twenty-Third through Twenty-Seventh Causes of Action of Plaintiff's Complaint, Plaintiff have and recover Judgment as against Defendants LIFE-CARE X-RAY, INC., FRANK V. MAIDA, JAMES E. NICOLLETTE, FRANK SANTAMARIA, HELARION BERONILLA, JR., YAHYA FADL, ANGEL BALCITA, CHARLES CHANG, SAMUEL FLANNAGAN, BARID B. JANA, NARCISA LIPANA, PAUL DASCANI, GREGORY SPAIN, WILLIAM HUGHES, and each of them, jointly and severally, as follows:

1. For damages in the sum of $592,213.27;

2. For attorneys' fees in the sum of $8,322.13;

3. For an order that the items of equipment and personal property described in that certain Equipment Lease Nos. 2773.01, 2773.02, and 2773.03, a copy of which is attached to Plaintiff's Complaint, marked Exhibit "12" and incorporated herein by reference, be delivered to Plaintiff. Upon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code section 9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the Judgment entered on account of Equipment Lease Nos. 2773.01, 2773.02, and 2773.03.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover from Defendants, and each of them, costs and disbursements in the sum of $602.41, together with interest on such Judgment as provided by law.

DATED: January 26, 1993

/s/ David H. Brickner

JUDGE OF THE SUPERIOR COURT
DAVID H. BRICKNER

UNIFORM COMMERCIAL CODE
DIVISION 9. Secured Transactions. Sales of Accounts. Contract Rights and Chattel Paper
CHAPTER 5. Default

Cal U Com Code § 9504

§ 9504. Secured party's right to dispose of collateral after default; Effect of disposition

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the secured party need not comply with his or her demand.

(2) (a) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure.

(b) If the security interest secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed or otherwise provided in the Retail Installment Sales Act, and in particular Section 1812.5 of the Civil Code or any other statute, but only (i) if the debtor was given notice, if and as required by subdivision (3), of the disposition of the collateral in accordance with subdivision (3), and the disposition of the collateral by the secured party pursuant to this section was conducted in good faith and in a commercially reasonable manner, or (ii) except for secured transactions entered by a debtor primarily for personal, family, or household purposes, as provided in paragraph (c).

(c) If the secured party has provided notice to the debtor pursuant to subdivision (3), if so required, but has not proceeded in a commercially reasonable manner in the disposition of the collateral, the debtor is liable, subject to paragraphs (b) and (d), for any deficiency only if the balance of the indebtedness immediately before the disposition exceeds the amount that the secured party establishes would have been realized had the disposition of the collateral by the secured party pursuant to this section been conducted in conformity with the conditions set forth in clause (i) of paragraph (b), and the liability is limited to the excess. This paragraph does not apply to secured transactions entered by a debtor primarily for personal, family, or household purposes.

(d) Notwithstanding paragraph (c), if any one or more of the conditions set forth in clause (i) of paragraph (b) are not proved by the secured party to be satisfied with respect to the disposition, then the debtor is not liable for any deficiency, if either:

(i) All of the collateral immediately before the disposition was consumer goods and the amount of the indebtedness immediately before the disposition was one hundred thousand dollars ($100,000) or less.

(ii) The amount of the indebtedness immediately before the disposition was fifty thousand dollars ($50,000) or less.

(e) Upon entry of a final judgment that the debtor is not liable for a deficiency by reason of either paragraph (c) or

paragraph (d), the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor that secured the indebtedness for which the debtor is no longer liable.

(f) To the extent, subsequent to a disposition that does not satisfy any one or more of the conditions set forth in clause (i) of paragraph (b), or subsequent to a collection that does not satisfy the condition set forth in clause (i) of paragraph (c) of subdivision (2) of Section 9502, the secured party disposes pursuant to this section of other collateral securing the same indebtedness, the debtor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (c) or paragraph (d), or by reason of paragraph (d) or paragraph (e) of subdivision (2) of Section 9502, recover the proceeds realized from the subsequent dispositions, as well as any damages to which the debtor may be entitled if the subsequent disposition is itself noncomplying or otherwise wrongful. Except for secured transactions entered by a debtor primarily for personal, family, or household purposes, neither the subsequent dispositions nor the exercise of any other remedy by the secured party subsequent to a noncomplying disposition or collection shall be deemed tortious or otherwise wrongful based, in whole or in part, on the fact that it occurred subsequent to a noncomplying disposition or collection.

(g) If the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. The provisions of subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds and the liability of the secured party apply only if the security agreement provides that the debtor is entitled to any surplus.

(h) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law; provided, however, that, except in the case of any secured

party that has willfully failed to conduct the disposition of collateral in good faith and in a commercially reasonable manner or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the amount of any deficiency that would have resulted had the disposition of the collateral by the secured party been conducted in conformity with the conditions set forth in clause (i) of paragraph (b) regardless whether or not the debtor is liable for the deficiency under paragraph (b) or (c).

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he or she has not signed after default a statement renouncing or modifying his or her right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his or her address (before that secured party sends his or her notification to the debtor or before debtor's renunciation of his or her rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepaid addressed to the debtor at his or her address as set forth in the financing statement or as set forth in the security agreement or at such other address as may have been furnished to the secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his or her last known address, and to any other secured party at the address set forth in his or her request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in

the county in which the sale is to be held or in case no newspaper of general circulation is published in the county in which the sale is to be held, in a newspaper of general circulation published in the county in this state that (1) is contiguous to the county in which the sale is to be held and (2) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his or her residence or chief place of business, or in the county in which the secured party has his or her residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he or she may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and that is held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings.

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the secured party, other bidders or the person conducting the sale, or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his or she rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

***48984 42 Pa.C.S.A. § 4306**

PURDON'S PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED
TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

§ 4306. Enforcement of foreign judgments

(a) Short title of section.—This section shall be known and may be cited as the "Uniform Enforcement of Foreign Judgments Act."

(b) Filing and status of foreign judgments — A copy of any foreign judgment including the docket entries incidental thereto authenticated in accordance with act of Congress or this title may be filed in the office of the clerk of any court of common pleas of this Commonwealth. The clerk shall treat the foreign judgment in the same manner as a judgment of any court of common pleas of this Commonwealth. A judgment so filed shall be a lien as of the date of filing and shall have the same effect and be subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of any court of common pleas of this Commonwealth and may be enforced or satisfied in like manner.

(c) Notice of filing.—

(1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall make and file with the office of the clerk of the court of common pleas an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor. In addition, such affidavit shall include a statement that the foreign judgment is valid, enforceable and unsatisfied.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the attorney for the judgment creditor, if any, in this Commonwealth. In addi-

tion, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(d) Stay.—

(1) If the judgment debtor shows the court of common pleas that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the State in which it was rendered.

(2) If the judgment debtor shows the court of common pleas any ground upon which enforcement of a judgment of any court of common pleas of this Commonwealth would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this Commonwealth.

(e) Optional procedure.—The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this section remains unimpaired.

(f) Definition. —As used in this section "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court requiring the payment of money which is entitled to full faith and credit in this Commonwealth.

BLUM
&
REISS
ATTORNEYS AT LAW

ROBERT L. BLUM
DAVID B. REISS
THOMAS L. PLAITANO, JR.

CONNELLSVILLE OFFICE
164 W. CRAWFORD AVENUE
CONNELLSVILLE, PA 15425
412-628-5020
FAX 412-628-3257

MT. PLEASANT OFFICE
353 W. MAIN STREET
MT. PLEASANT, PA 15666
412-547-4539
FAX 412-547-8184

GREENSBURG OFFICE
132 S. PENNSYLVANIA AVENUE
GREENSBURG, PA 15601
412-836-4380

PLEASE DIRECT RESPONSE TO Mount Pleasant OFFICE:

November 7, 1992

Ted A. Galfin, Esquire
Suchman, Galfin & Passon
18101 Von Karman, Suite 1400
Irvine, CA 92715-1007

RE: LifeCare X-Ray, Inc.
Our File No. 92-1231

Dear Mr. Galfin:

I have contacted you on several occasions concerning my clients who are personal guarantors on the Lease Agreement between Bell Atlantic Tricon and LifeCare X-Ray, Inc. My clients are very anxious to work out some accommodation with Bell Atlantic Tricon. They are all in receipt of the default notices concerning the litigation which you commenced

against them in Orange County Court. To that end, I would ask you to give me the amount of arrearages as well as the payoffs for these leases. I have enclosed copies of what I believe to be the LifeCare X-Ray leases. It is my understanding that the leases in question are the only leases concerning the LifeCare surgery unit that have not been brought up to date in the last month.

After we have received the amounts of arrearages and the payoffs, I believe that we will be able to make arrangements to pay Bell Atlantic Tricon to their satisfaction.

In the interim, if you would like to discuss this matter, please feel free to contact me.

Very sincerely your,

By: /s/ Robert L. Blum
Robert L. Blum

RLB/clm
Enclosures

BLUM
& ATTORNEYS AT LAW
REISS

ROBERT L. BLUM
DAVID B. REISS
THOMAS L. PLAITANO, JR.

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PLEASE DIRECT RESPONSE TO Mount Pleasant OFFICE:

April 28, 1993

David L. Robinson, Esquire
Attorney at Law
Robinson Building
101 West Pittsburgh Street
Greensburg, PA 15601

RE: LifeCare X-Ray, Inc./Bell Atlantic Tricon
Our File No. 92-1231
Your File No. 5390

Dear Mr. Robinson:

Thank you for your letter of April 8, 1993. I have forwarded a copy of the same to my clients and as you probably know, we are in the midst of negotiating with several parties concerning the equipment leased by your client to LifeCare X-Ray, Inc.

In reviewing my file, I had found a prior letter which indicated that there was a time limitation of May 10, 1993 by which to have the equipment sold. It does not appear that we will be able to complete any meaningful negotiations for the sale of any of the pieces of equipment within that deadline. Therefore, I would ask that your client consider a more realistic deadline of July 1, 1993.

I would ask you to acknowledge whether or not this is acceptable.

I look forward to hearing from you in the very near future.

Very sincerely yours,

By: /s/ Robert L. Blum
Robert L. Blum

RLB/clm

BLUM
& ATTORNEYS AT LAW
REISS

ROBERT L. BLUM
DAVID B. REISS
THOMAS L. PLAITANO, JR.

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GREENSBURG OFFICE
132 S. PENNSYLVANIA AVENUE
GREENSBURG, PA 15601
412-836-4380

PLEASE DIRECT RESPONSE TO Mount Pleasant OFFICE:
VIA FAX:

May 6, 1993

David L. Robinson
Attorney at Law
Robinson Building
101 West Pittsburgh Street
Greensburg, PA 15601

RE: LifeCare X-Ray, Inc./Bell Atlantic Tricon
Our File No. 92-1231
Your File No. 5390

Dear Mr. Robinson:

This is to confirm our telephone conversation of May 6, 1993 concerning the sale and purchase of the four (4) pieces of equipment which your client, Bell Tricon, had leased to my client, LifeCare X-Ray, Inc.

As I informed you, the CAT scanner has been discussed with Fulton County Hospital. It is my understanding that they also contacted Laura Smith and had been discussing the figure of Two Hundred Thousand and NO/100 Dollars ($200,000.00) for the purchase of the same. The purchasing agent from the hospital was to be in Mount Pleasant last week and had to postpone his visit. I will let you know after he views the CAT scanner.

Robert Aul of Tri-County Magnetic Imaging has made an offer to purchase the plane x-ray as well as the mammography unit. We have another doctor who is to look at it next week. We are hoping that we can increase the purchase price between these two interested parties.

This only leaves the fluoroscope unit. It is my understanding that Dr. Spain has contacted a broker and placed it on the market. I fully expect that all four units can be sold in the near future.

This also is to confirm that you will not attempt to repossess this equipment on May 10, 1993 and thereafter without prior notice to the undersigned. I will keep you apprised as to negotiations for the sale of these items. I would appreciate it if you would let me know what procedure we can follow to have the items sold individually. I realize that on each item there is an arrearage. I would ask you to discuss how your client wants to handle this.

Very sincerely yours,

By: /s/ Robert L. Blum
Robert L. Blum

RLB/clm
cc: Gregory Spain, D.P.M.

FISHER, LONG & RIGONE
ATTORNEYS AT LAW
ROBINSON BUILDING
101 WEST PITTSBURGH STREET
GREENSBURG, PENNSYLVANIA 15601
(412) 834-9300

FAX (412) 834-9303

B. EARNEST LONG
DONALD R. RIGONE
DAVID L. ROBINSON
WESLEY T. LONG
GARY A. FALATOVICH

BARRY B. GINDLESPERGER
LINDA L. WHALEN

PAUL M. ROBINSON
1892-1973
CARL E. FISHER
1920-1988

May 7, 1993

Robert L. Blum, Esquire
353 West Main Street
Mt. Pleasant, PA 15666

Re: Bell Atlantic vs. Nicollette, et al.
No. 2616 of 1993
Our File No. 5390

Dear Bob:

In response to your letter of May 6, 1993, I wish to clarify that I do not have the final authority to grant an extension for repossessing the leased equipment. That decision rests with Laura Smith at Bell Atlantic. I am concerned that these deficiency proceedings have been pending for well over six months and the default judgment was entered in California over three months ago. There have been suggested proposals that Frick Hospital would take over some of this equipment or that a variety of other people were interested in purchasing this equipment with no concrete proposals to date. As I indicated in my letters of April 8th, Bell Atlantic was looking for a well-defined and documented plan in place by May 10, 1993. The current status of the proposals do not appear to meet that test.

I will be discussing this matter with Laura Smith on May 10, 1993 and advise you immediately of our decision in this matter.

Very truly yours,

FISHER, LONG & RIGONE

By: /s/ David L. Robinson
David L. Robinson

GREGORY C. SPAIN, D.P.M.
FOOT SURGERY AND PODIATRIC MEDICINE
DIPLOMATE OF AMERICAN BOARD OF PODIATRIC SURGERY

May 14, 1993

Mr. David Robinson
101 W. Pittsburgh St.
Greensburg, PA 15601

Dear Mr. Robinson:

As per our phone communication on Tuesday, May 11, 1993. As president of LifeCare X-Ray Corporation, I approve the offer made by Mr. Bob Aul.

It is my understanding that Mr. Aul has offered $50,000 for the x-ray equipment that is listed on leases 2773.02 and lease 2293.01. This offer was for $50,000.

I have spoken with individuals close to the imaging business and they indicate that this is a fair offer.

If I can be of any further assistance, please do not hesitate to contact my office.

Sincerely,

By: /s/ Gregory C. Spain
Gregory C. Spain, D.P.M.

GCS/gmk

21 MAY 1993
RECEIVED
ROBINSON, DAVID
Attorneys at Law
GREENSBURG, PA

Exhibit "R"

235 HUMPHREY RD • TWO PINEVIEW PLACE • SUITE 4 • GREENSBURG, PA 15601
(412) 832-7880

223 SO. PLEASANT AVE • MED-COR CENTRAL, SUITE 201 • SOMERSET, PA 15501
(814) 443-1524

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BELL ATLANTIC-TRICON LEASING CORPORATION,	:	
Plaintiff	:	
	:	No. 2616 of 1993
vs.	:	
JAMES E. NICOLLETTE, et al.,	:	
Defendants	:	

NOTICE OF INTENTION TO PROCEED WITH PRIVATE SALE

DATE: AUGUST 26, 1994

TO: THE OFFICERS, DIRECTORS, SHAREHOLDERS/PARTNERS, AND GUARANTORS

LESSOR: BELL ATLANTIC TRICON LEASING CORPORATION (hereinafter BAT)

LESSEE: LIFECARE CARDIAC CENTER

LEASE NUMBER: 2928

DATE OF LEASE: MARCH 28, 1991

In June, 1993, Son-X Mobile Imaging, Inc. (hereinafter Son-X) proposed to Lifecare Cardiac Center a restructuring of the above-captioned Lease. Upon information received, the officers, directors, and shareholders/partners of Lifecare Cardiac Center did not act upon that proposal despite repeated requests. Son-X has withdrawn its proposal to assume the Lease as aforesaid.

Son-X has agreed to pay the sum of Forty-Nine Thousand Three Hundred Seventeen and 89/100 ($49,317.89) Dollars for its use of the equipment from June, 1993 until June, 1994.

John R. Kennerdell, one of the guarantors on the above Lease, has proposed to purchase the Acuson Model 128-XP1O and one of the Toshiba laptop computers for a total consideration of One Hundred Thousand ($100,000.00) Dollars. A portion of the purchase price is to also pay a portion of John R. Kennerdell obligation under the guarantee agreement. BAT has agreed not to pursue John R. Kennerdell further under the guarantee agreement as a part of the consideration for the purchase of the equipment.

BAT proposes to proceed with the sale of the Acuson and Toshiba equipment on or after September 6, 1994.

BAT currently has in its possession a Collins pulmonary function machine which will also be offered for sale on or after September 6, 1994 at private sale. BAT has requested of Cipriani the return of one Toshiba laptop computer, and upon its return, it will be offered for sale on or after September 6, 1994.

BAT will look to the guarantors (except John R. Kennerdell) and the officers, directors, shareholders/partners of Lifecare Cardiac Center, Inc. a/k/a Lifecare Cardiac Center. P.C. a/k/a Lifecare Cardiac Center, a partnership, for any balance remaining due on the judgment entered in Westmoreland County after credit is given for the sale of the equipment noted herein.

FISHER, LONG & RIGONE

By /s/ David L. Robinson

David L. Robinson
Attorney for Bell-Atlantic
Tricon Leasing Corporation,
its successors and assigns

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BELL ATLANTIC-TRICON LEASING CORPORATION,	:	
Plaintiff	:	No. 2616 of 1993
vs.	:	
JAMES E. NICOLLETTE, et al.,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, David L. Robinson, Attorney for Bell Atlantic-Tricon Leasing Corporation, its successors and assigns, hereby certify that I served the foregoing Notice of Intention to Proceed with Private Sale on the following named persons by first-class pre-paid mail and by certified mail, return receipt requested, on August 26, 1994:

Donald P. Tarosky, Esquire
Ceraso & Tarosky
126 North Maple Avenue
Greensburg, PA 15601

Richard E. Bower, Esquire
319 N. Pittsburgh Street
Connellsville, PA 15425

Dr. Frank V. Maida
107 West Main Street
Mt. Pleasant, PA 15666

Dr. Shamsher Bakth
P.O. Box 81680
Pittsburgh, PA 15217-0480

Dr. Angel Balcita, Jr.
599 North Church Street
Mt. Pleasant, PA 15666

Dr. Donald D. Yoon
115 West Main Street
Mt. Pleasant, PA 15666

Dr. Dominic Dileo
6 Spring Creek Lane
Uniontown, PA 15401

John R. Kennerdell
212 Bryant Drive
Vandergrift, PA 15690

Terence O'Halloran, Esquire
15 East Otterman Street
Greensburg, PA 15601

Lifecare Cardiac Center, Inc., a/k/a
Lifecare Cardiac Center, P.C.
111 East Main Street
Mt. Pleasant, PA 15666

FISHER, LONG & RIGONE

By /s/ David L. Robinson

David L. Robinson

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BELL ATLANTIC-TRICON LEASING CORPORATION, Plaintiff	:	No. 2616 of 1993
vs.	:	
JAMES E. NICOLETTE; ET AL., Defendants	:	

NOTICE OF INTENTION TO PROCEED WITH PRIVATE SALE

DATE:	MAY 12, 1995
TO:	THE OFFICERS, DIRECTORS, SHAREHOLDERS/PARTNERS, and GUARANTORS
LESSOR:	BELL ATLANTIC TRICON LEASING CORPORATION (hereinafter "BAT")
LESSEE:	LIFECARE LABORATORIES, INC.
LEASE NUMBER:	2983
DATE OF LEASE:	SEPTEMBER 24, 1991

As you know, on July 19, 1994, the depositions of Frank Santamaria, MD, and James E. Nicolette, DMD, were taken for the purpose of identifying the equipment under lease to Bell Atlantic-Tricon Leasing Corporation. Since that time, "BAT" has attempted to sell the subject equipment, either in place as an entire laboratory or individually, in an effort to obtain the best price available "BAT", through Medical Marketing International, has listed the subject equipment, advertised the equipment, and used various other commercial and reasonable efforts to dispose of this equipment. Because a large amount of similar used equipment is currently on the market, disposing of the subject equipment has not been

productive. A portion of the equipment which was leased involved cabinetry specifically designed for the layout of the existing Lifecare laboratory.

The highest and best offer for all of the equipment, in place, was received from KEYSTONE CLINICAL LABORATORIES for the sum of $8,900.00. This offer includes the removal of all equipment and the cabinetry which is covered by the Lease between "BAT" and Lifecare Laboratories, Inc., and which was determined to be on the leased premises on July 19, 1994.

"BAT" proposes to proceed with the sale of this equipment at a private sale on or after MAY 18, 1995, at 5:00 o'clock, P.M.

"BAT" will look to the guarantors and the officers, directors, shareholders/partners of Lifecare Laboratories, Inc. for any balance remaining due on the judgment entered in Westmoreland County after credit is given for the sale of the equipment noted herein.

If you object to this sale or the manner in which it is being conducted, please contact the undersigned immediately.

FISHER, LONG & RIGONE

By: /s/ David L. Robinson
David L. Robinson, Esquire
Attorneys for Bell Atlantic Tricon Leasing Corporation, its successors and assigns

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BELL ATLANTIC-TRICON LEASING CORPORATION,	:	
Plaintiff	:	
	:	No. 2616 of 1993
vs.	:	
	:	
JAMES E. NICOLETTE; ET AL.,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, DAVID L. ROBINSON, ESQUIRE, for BELL ATLANTIC TRICON LEASING CORPORATION, its successors and assigns, hereby certify that I served the foregoing Notice of Intention to Proceed with Private Sale on the following named persons by First-Class, Pre-Paid Mail, and by Certified Mail, Return Receipt Requested, (and via FAX to counsel for the parties listed herein) on May 12, 1995:

Frank Santamaria, M.D.
R.D.#6, Box 264
Mount Pleasant, PA 15666

Donald P. Tarosky, Esquire
CERASO & TAROSKY
126 North Maple Avenue
Greensburg, PA 15601
(Attorney for Frank V. Maida, M.D.)

James E. Nicolette, D.M.D.
R.D.#6, Box 295
Mount Pleasant, PA 15666
and
220 Bessemer Road
Mount Pleasant, PA 15666

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SABLE, MAKOROFF & GUSKY, P.C.
7th Floor, Frick Building
Pittsburgh, PA 15219-6002
(Attorney for James E. Nicolette and Frank Santamaria)

Frank V. Maida, M.D.
R.D.#1
Acme, PA 15610

LIFECARE LABORATORIES, INC.
c/o James E. Nicolette
Director/Owner/CEO
220 Bessemer Road
Mount Pleasant, PA 15666

LIFECARE LABORATORIES, INC.
c/o Brett A. Nicolette
Financial Manager
R.D.#6, Box 295
Mount Pleasant, PA 15666

FISHER, LONG & RIGONE

By: /s/ David L. Robinson
David L. Robinson, Esquire

June 8, 1993

Dear Shareholder:

Recent developments in the status of LifeCare X-ray have prompted this letter. There is movement on several fronts with regard to corporate business.

First, all radiographic equipment, including the in-house mammography, the mobile mammography, the regular x-ray table, the fluoroscopy unit, and the CT scanner have been sold. The purchase price, as negotiated between Robert Aul and Bell TriCon was $83,000.

The exact credit to each lease has not been returned to me from Dave Robinson, the attorney for Bell TriCon. I will forward that information to you as soon as it becomes available.

Second, National Bank of the Commonwealth has requested a meeting of all the personal guarantors of loans through LifeCare X-ray. There is a meeting scheduled at 4:00 p.m., June 16, 1993 in the third floor conference room of LifeCare Professional Building. This meeting is only for personal guarantors. A certified letter has been sent to those parties involved.

National Bank of the Commonwealth is rather nervous and would like the individual guarantors to sign additional notes to guarantee their repayment for that money. At this point, I could not recommend any alteration of our current agreement with NBOC. The payments that we have made in the last month have brought us almost current.

Third, we are continuing our investigation into the operation of LifeCare X-ray. I thank everyone for the return of their proxies. Mr. Blum is proceeding with legal action against various individuals to obtain information. It is very likely that we will need to enter into legal civil actions to obtain enough information to provide us with a tax form for 1992. It is also very likely that we will require information from different individuals in order to track expenses through LifeCare X-ray.

I am continuing my investigation into the checks written through LifeCare X-ray. I have evaluated bank statements from 1990, 1991, and 1992.

Currently, I am of the opinion that there was gross mismanagement, probable malfeasance, and possible criminal activity with the actions of the various corporations.

I have not formed an opinion as to the responsible people, nor will I form any opinion until the facts present themselves.

Fourth, Mr. Bob Aul has ceased attempts to try to collect our accounts receivable. He has told me that we *may* have $20,000 to $30,000 outstanding. He does not have the staff or ability to collect this. I am negotiating with Mr. Arnold DeCarlo, who is the collection person for New Kensington X-ray, to collect these funds. Since the accounts are so old, Mr. DeCarlo has requested a $1,200 deposit, and he would like 40 percent of the collected revenues. We most likely will not pressure the accounts receivable.

Fifth, it is very possible in the near future that LifeCare X-ray will liquidate all of the furniture in the suite. I have been informed by NBOC that they wish to confirm fair market values and approve all sales.

Sixth, the building has locked the x-ray suite. We are unable to enter the suites at this time. That situation has to be resolved.

Sincerely,

/s/ Gregory C. Spain

Gregory C. Spain, D.P.M.

GCS/gmk

Supreme Court, U.S.
FILED
FEB 6
CLERK

No. 97-1055

In The

Supreme Court of the United States

October Term, 1997

FINOVA CAPITAL CORPORATION,
SUCCESSOR IN INTEREST TO
BELL ATLANTIC TRICON LEASING CORPORATION,

Petitioner,

v.

LIFECARE X-RAY, INC.; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; YAHYA FADL; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; AND LIFECARE CARDIAC CENTER, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

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28 pp

COUNTER-STATEMENT OF THE QUESTION PRESENTED

Did the Court below properly determine that it was bound by the requirements of Full Faith and Credit to accord validity to all the provisions of a properly registered sister state judgment, and did the Court below properly construe the requirements of that judgement?

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COUNTER-STATEMENT OF THE CASE

This case began as a breach of contract action in the Superior Court of the State of California for the County of Orange. Default was entered and after hearing judgments were entered. The California Judgments were registered in Pennsylvania in accordance with the Uniform Enforcement of Foreign Judgments Act of Pennsylvania. The Petitioner first requested that the California judgment be given Full Faith and Credit in the Petitioner's entry of Judgment. App. 32a. The Petitioner again raised Full Faith and Credit in Paragraph 9 of its Answer to Rule to Show Cause. App. 30a. The Pennsylvania lower Court found the judgments to be valid under Full Faith and Credit and denied the Respondents' request to open or strike the judgments. The Pennsylvania lower Court denied enforcement on the deficiency judgments holding "Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule [of Califonia]". The Pennsylvania lower Court found that the Petitioners had failed to abide by the notice requirements mandated by the express provisions of the originally transferred judgment, specifically, the requirements of California Commercial Code Section 9504, subsection 3. The Superior Court of Pennsylvania affirmed the Pennsylvania lower Court's decision and agreed that the Petitioners did in fact fail to comply with the aforesaid notice requirements. The Pennsylvania Supreme Court denied a Petition for Allowance of Appeal without an Opinion. The decision is in complete conformity with the Federal Full Faith and Credit statute, 28 U.S.C. §1738 and the Uniform Enforcement Of Foreign Judgments Act of Pennsylvania, and upholds the Order of the Superior Court of

the State of California for the County of Orange by requiring strict adherence to its provisions incorporating the strict notice requirements mandated by California Commercial Code §9504, subsection 3.

The question before this Court, properly framed, is whether the Pennsylvania Court properly determined that it was bound by the requirements of Full Faith and Credit to uphold the specific elements of the order originally entered by the Superior Court of the State of California for the County of Orange concerning strict compliance with the notice requirements of California Commercial Code §9504, subsection 3.

1. BACKGROUND

Commencing in 1988, the Petitioner, Bell Atlantic Tricon Leasing Corporation (BAT) [now Finova Capital Corporation], began to lease medical equipment to various doctors individually. By October of 1991 BAT had entered into six (6) separate and distinct leases between individuals and corporate lessees with individual guarantors. In 1992 all said leases went into default. The Petitioner's lease agreements, naming BAT, a California corporation, as a party, included jurisdictional and choice of law provisions selecting California, as opposed to Pennsylvania.

2. INITIAL FROCEEDINGS IN CALIFORNIA

BELL Atlantic Tricon Leasing Corporation, whose principal place of business was in the State of California, had instituted suit on June 25, 1992 in Orange County

California under the terms of the lease agreement. A Complaint for breach of all six (6) leases was filed at Case No. 691693 in the Superior Court of the State of California for the County of Orange. Service of the Complaint occurred during July or August of 1992. On January 26, 1993, a default judgment was entered against the Respondents for failure to respond to the Complaint. The subject judgment provided, in significant part, that certain items of equipment and personal property described in the complaint originally filed be delivered to the plaintiff. The judgment specifically provided that, upon delivery of possession, the plaintiff must sell or dispose of the personal property in a commercially reasonable manner as provided by California Commercial Code Section 9504.

3. THE PROCEEDINGS IN PENNSYLVANIA

a. Court of Common Pleas of Westmoreland County, Pennsylvania

On April 7, 1993, the California judgments were registered in Pennsylvania pursuant to the Uniform Enforcement of Foreign Judgments Act (UEFJA), 42 Pa.C.S. §4306. App. 30a-38a.

On April 8, 1993, the Petitioners' counsel sent correspondence that states in pertinent part, "These leases have been in default for a considerable period of time and I am advising you that Bell Atlantic Tricon will proceed with reclaiming the equipment on or shortly after May 10, 1993. If a well defined and documented plan is not in place by that time Bell Atlantic Tricon will have no other alternative but to proceed with the sale of the equipment

and enforcement of the judgment for any remaining balance that is due". In Mid-May 1993 the equipment for which the Respondents were guarantors was sold to a purchaser with whom counsel for certain of the Respondents had been negotiating. App. 64a.

In March of 1994, the Respondents (except for Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc.) moved to open or strike the judgments, alleging, inter alia, that the Respondents were not properly subject to the jurisdiction of the California Court and, in the alternative, that the judgments were unenforceable due to the Petitioner's failure to notify the Respondents of the sale of the leased property. The lower Court of Pennsylvania properly reviewed the Petitions, Answer, Affidavits, Deposition and Oral Arguments rendering its opinion of March 26, 1996. In the Opinion of March 26, 1996 the Court denied the Respondents request to open or strike the judgment concluding that there was no support for the Respondents' contention that they were not properly subject to the jurisdiction of the California Courts. App. 13a-26a. The Court did conclude, however, that the Petitioners failed to comply with the Order of the Superior Court of the State of California for the County of Orange by failing to sell or dispose of the collateral in a commercially reasonable manner as provided by Commercial Code Section 9504. The Court further concluded that, under the terms of the Order:

> "by choosing to proceed with the sale of the leased equipment without notice the Plaintiff forfeited its right to seek a deficiency judgment against the Defendants under 9504." App. 23a.

The lower Court of Pennsylvania therefore entered an Order which states:

> "The Court having found the Plaintiff has failed to comply with the notice provision of §9504 of the California Commercial Code as required by the original California Order, dated January 26, 1993; Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule." App. 24a-25a.

b. The Pennsylvania Superior Court

On appeal, the Pennsylvania Superior Court affirmed the lower Court's Order barring the enforcement of the registered Pennsylvania judgment. The Superior Court held that "In the present case Appellant was expressly ordered to comply with §9504 which includes the notice provisions of §9504 (Section 3). This notice requirement is to be strictly construed and failure to comply with it will act as an Absolute Bar to a deficiency judgment under California law. This Rule of Law has not been changed in any manner by the 1991 Amendments to §9504. Thus, the deficiency judgments are not enforceable under California law." App. 11a. In so determining, the Superior Court cited the California case of *Atlas Thrift Co. v. Horan*, 27 Cal.App.3d 999, 104 Cal.Rptr. 315 (1972). App. 9a. The Superior Court rejected the Petitioner's argument that this rule had been changed by the 1991 Amendments to Section 9504, and noted that the California case of *Canadian Commercial Bank v. Ascher Findley Co.*, 229 Cal.App.3d 1139, 280 Cal.Rptr. 521, 526 (1991), relied on by the Petitioner, allowed the abandonment of the Absolute Bar Rule only in certain specific instances, but never in the

instance in which notice was required and not given. App. 10a.

Under the Full Faith and Credit principle the Superior Court of Pennsylvania could not enforce the deficiency judgment since they were not enforceable under California law. App. 11a. Furthermore, the Superior Court found it significant that the "Appellant attempted to amend the default judgment order to eliminate the §9504 notice requirements. The California Court refused to do so." App. 11a. The Superior Court noted of the Petitoner's argument that "the trial Court herein rejected this argument concluding that the Appellant elected to proceed under §9504 and is bound by that decision. We do not disagree with this logic. Since the deficiency judgments are not valid, we agree that the bond was properly denied. Orders affirmed". App. 12a.

C. The Pennsylvania Supreme Court

On April 24, 1997, the Petitioners filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania requesting consideration on three questions, framed by the Petitioners as follows: (1) The Superior Court's decision conflicts with this Court's ruling regarding Pennsylvania Courts opening and re-trying a final judgment of a competent Court that is before it by transfer via the Enforcement of Foreign Judgments Act; (2) The Superior Court's decision was not in accord with the decisions of other Superior Court decisions on the same question concerning the transferee Court's discretion and the doctrine of *res judicata*; (3) The Superior Court's decision below was not in accordance with other Superior Court

rulings below, entitling Full Faith and Credit to Foreign Judgment Laws and the Pennsylvania Courts lack of jurisdiction to re-litigate said judgments. On September 19, 1997, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal without comment. The Supreme Court of Pennsylvania's allowed the Pennsylvania Superior Court decision to stand undisturbed.

4. SUBSEQUENT PROCEEDINGS IN CALIFORNIA

On October 27, 1995, Judge Brickner of the Superior Court of the State of California for the County of Orange amended the original Order of January 26, 1993 ex parte in reference to §9504 as it related to the leases entered into after January 1, 1991 to reflect their status as UCC §2A leases based on the Petitioner's representation that there was a clerical error made. On subsequent application by the Respondents by Order dated December 15, 1995, Judge Brickner voided the amendment as being more than a clerical error and indicated that the language of the judgment bestowed a right upon the defaulted defendants, the Respondent. App. 27a. The Court ruled "the nature and extent of this right is not for the Court to determine, suffice it to say that it is potentially of some value and cannot be taken from them under the banner of clerical error change."

On June 24, 1996, the Petitioner was granted a hearing before Judge Brickner on his four (4) Motions, *i.e.*: (1) confirming compliance; (2) confirming enforceability; (3) determining amount due and (4) clarifying status of parties. The holding of the Superior Court of the State of

California for the County of Orange in regard to these Motions is as follows:

"The four Motions of Plaintiff"; "confirming compliance"; "confirming enforceability"; "determining amount due"; and "clarifying status of parties" are all denied. They are without merit and call upon the Court to make findings which are both advisory and beyond its jurisdiction."

Furthermore, the Court determined that "concerning the issues of sanctions, while the Motions above are virtually unknown in the law, the moving party did have the closing remarks of Judge Scherer, which would clothe the moving party in, at least, a Good Faith Argument. Thus the Motion for Sanctions is denied." This was the final Order and determination of the Superior Court of the State of California for the County of Orange in regard to this action. App. 29a.

5. THE LIFECARE CARDIAC CENTER, INC. AND LIFECARE LABORATORIES, INC. JUDGMENTS

Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. did not Petition the lower court for relief. Although Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. did not Petition for relief from the lower court they were named Defendants in the action taken by Bell Atlantic Tricon. As named parties in the action the lower court's Order properly applies to Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. in the application of the Absolute Bar Rule to the judgments arrived at in the January 26, 1993 California Court Order. These parties too, were subject to the non-compliance by the

Petitioners under §9504 of the California Commercial Code and they are properly affected by the findings of the Pennsylvania lower Court. Footnote 1, App. 4a. The Superior Court of Pennsylvania properly denied a request for reconsideration to address this issue.

SUMMARY OF ARGUMENT

The Pennsylvania Court, as transferee of a properly registered foreign judgment from the State of California, completely honored the requirements of Full Faith and Credit in according the transferred judgment the same effect it would have been accorded in the rendering State of California.

The decisions of the Pennsylvania Courts were based upon the specific language of the transferred judgment, which was drafted by the Petitioner itself. This language did not affect a mere procedural matter involving execution on the judgment, but instead went to the very substance of whether in fact the transferred judgment itself provided for the recovery of the alleged deficiency by the Petitioner.

The Petitioner recognized that the subject language affected not merely procedural, but substantive matters, as evidence by the Petitioner's attempt to delete the troublesome language in its *ex parte* application to the California Court, in which the Petitioner represented falsely to that Court that the deletion of the subject language was merely in the nature of a clerical correction not affecting the substantive rights of the parties. The California Court expressly rejected this representation when

granting the Respondents' motion to vacate the *ex parte* order deleting this language, after being informed for the first time by the Respondents that the Pennsylvania Court had concluded that, under California law, the inclusion of this language rendered the alleged deficiency unenforceable if strict notice was not provided to the Respondents by the Petitioner.

The Pennsylvania Courts have properly analyzed the specific provisions of the transferred judgment and have properly applied the controlling law of the rendering State of California, and consequently have properly concluded that the specific terms of the transferred judgment bar enforcement of any alleged deficiency resulting from the sale of the repossessed goods. The decision of the state court is in complete conformity with prior decisions of this Court and, in fact, is mandated by those decisions. Moreover the underlying policy and purposes of Full Faith and Credit would be subverted by allowing the Petitioner to escape the mandates of the transferred judgment and to once again attempt to relitigate this settled issue in the Courts of California. In fact, Full Faith and Credit mandates that the proper decision of the Pennsylvania Court in the instant matter be accorded Full Faith and Credit by the Courts of California, such that the Petitioner is prohibited from returning to the State of California to once again attempt yet another bite of a rotten apple.

REASONS FOR DENYING THE PETITION

The Pennsylvania lower court consistent with the Full Faith and Credit provision of the U.S. Constitution and 28 U.S.C. §1738 did acknowledge the California judgments as being properly obtained in California, acknowledged proper registration in Pennsylvania and acknowledged that they were not subject to being open or struck. The Pennsylvania lower court also found that the law of its sister state, California, was not complied with while proceeding for deficiency judgment enforcement. In furtherance of the Full Faith and Credit provision of the U.S. Constitution and 28 U.S.C. §1738 the lower court of Pennsylvania found that failure to comply with the notice requirements of the California Commercial Code §9504 was an Absolute Bar to the satisfaction of the deficiency judgments inside the State of California and therefore applied to judgments registered in the State of Pennsylvania.

The Full Faith and Credit Clause and 28 U.S.C. §1738 in pertinent part directs the judiciary of individual states to pay respect to the judgments of foreign states. To accomplish the intent of the Full Faith and Credit Clause and 28 U.S.C. §1738 the individual states must also respect the law upon which each judgment is formulated and rendered. Under Pennsylvania's adoption of the Uniform Enforcement of Foreign Judgments Act at 42 Pa. §4306 "[the courts] shall treat the foreign judgment in the same manner as a judgment of a Court of Common Pleas of this Commonwealth." App. 45a. The treatment a judgment is rendered by a Court of Common Pleas of the Commonwealth of Pennsylvania is in reliance upon, not in defiance of, the statute upon which it is entered and

upon which it is to be enforced. In the instant case, California law was utilized in the establishment of the default judgments at issue. The Honorable David H. Brickner of the Superior Court of California of the County of Orange ordered "Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code §9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the judgment entered." App. 38a. The Pennsylvania lower court, in application of the Full Faith and Credit clause and in compliance with 28 U.S.C. §1738, recognized the California judgment *in its entirety* and therefore refused to enforce the deficiency provisions of that judgment due to the Petitioner's noncompliance with California Commercial Code §9504, which, under California law, resulted in an Absolute Bar to that enforcement. The Pennsylvania Superior Court affirmed that the lower court of Pennsylvania complied with its Full Faith and Credit obligations under 28 U.S.C. §1738. The Pennsylvania Superior Court in upholding the California judgment and the California law upon which the judgment rests, has complied with the Full Faith and Credit principle. The Superior Court of Pennsylvania's findings set forth

> "Appellant was expressly ordered to comply with §9504 which included the notice provisions of §9504(3). This notice requirement is to be strictly construed and failure to comply with it will act as an Absolute Bar to a deficiency judgment under California law." App. 11a.
>
> "This rule of law has not been changed, in any manner, by the 1991 amendments to §9504.

Thus, the deficiency judgments are not enforceable under California law."

The Petitioner asserts that the Pennsylvania Courts have failed to comply with the Full Faith and Credit clause and 28 U.S.C. §1738 under this Court's interpretation of *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873, 877 (1996). In that case, the U.S. Supreme Court explained (the statute) "Directs all courts to treat a state court judgment with the same respect that it would receive in the courts of the rendering state." *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873, 877 (1996). The Respondents assert that both the Pennsylvania lower court and the Pennsylvania Superior Court have complied with that explanation of the Full Faith and Credit obligation. The Pennsylvania courts recognized the California law and its requirements and rendered the necessary respect as obligated. The Petitioners overlook the necessary review of the law upon which the judgment was rendered. The Superior Court of California of the County of Orange, by its inclusion, *at the Petitioner's request*, of the subject language in its judgment, expressly required that, in order to recover any deficiency resulting from the sale of the subject equipment, the Petitioners had to adhere to the requirements of California Commercial Code §9504. The Pennsylvania courts have upheld the interest and effort put into this matter by the California courts and respected, through compliance, the order of that court. The actions of the Pennsylvania courts uphold the interest that must be respected by the courts in other courts as a matter of federal constitutional law. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. at 430, 436-39 (1943); *Williams v. North Carolina*, 317 U.S. 287, 293-96 (1942); *Thomas v.*

Washington Gas Light Co., 448 U.S. 261, 293 (1986) (Rehnquist, J. dissenting). 28 U.S.C. §1738 sets forth:

> "Every court in the United States must give the judgment the same effect and recognition as it would receive from the court that rendered it."

The Pennsylvania courts have fulfilled the requirement of 28 U.S.C. §1738 in finding as the California courts would find. "[F]ailure to comply with the notice requirement precludes the secured party from recovering a deficiency judgment against the 'debtor'." *Earl Of Loveless, Inc. v. Gabele*, 2 Cal.App.4th 27, 2 Cal.Rptr. 2d 829 (1991). The Pennsylvania courts have fulfilled the legitimate interest of the parties and the objectives of Full Faith and Credit in seeing that "there be an end to litigation" through the application of the law of the rendering state, California, to the requirements of notice and the enforceability of the alleged deficiency. *Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 525 (1931).

The Respondents disagree with the Petitioner's assertion that the only issue remaining after the entry of the January 26, 1993 Court Order in California and its registration within Pennsylvania April 7, 1993 was payment. To the contrary, compliance with the court order set forth January 26, 1993 by the Superior Court of California of the County of Orange was necessary to gain enforcement of the deficiency judgments. As stated in the Restatement (second) of Conflict of Laws §92 Cmt.c (1971), "proceedings pending on the judgment in the rendering state do not affect the validity of the judgment for purposes of Full Faith and Credit in sister states". *Nanonstank of North Carolina v. Parsons*, 477 S.E. 2d 735, 739 (S.C. App. 1991). The validity of the California judgments for purposes of

Full Faith and Credit was never in question. The issue has always been, and continues to be, whether there was compliance with the requirements of California Commercial Code Section 9504. There is no issue of Full Faith and Credit since Pennsylvania recognized the default judgments rendered by the California courts. The validity given to the California judgment by the Pennsylvania Court is evidence by the lower court of Pennsylvania's refusal to open or strike the judgment registered in Pennsylvania. App. 24a-25a.

As the Superior Court of Pennsylvania has held in *Noble Well Service, Inc. v. Penn Energy,* 502 A.2d 200 (Pa.Super. 1985):

> "The validity of a foreign judgment is established in the transferor court, and may not be retried in the Pennsylvania courts, except for the limited purpose of determining whether the transferor court had jurisdiction to enter the judgment, and whether the judgment was obtained without derogating the judgment debtor's due process rights." *Id.* at 205, 206.

In the instant case, the Pennsylvania lower court found that the debtor's due process rights were being derogated since the notice requirements of the California Commercial Code §9504, in particular, Section 3, were not being complied with California law. In so finding, the lower Pennsylvania court determined that this non-compliance barred the Petitioner from seeking a deficiency judgment in Pennsylvania under the Absolute Bar Rule [of California]. App. 24a-25a. The Superior Court of Pennsylvania affirmed this ruling based upon California case law.

> "Failure to comply with either the notice requirement or the requirement of commercial reasonableness will act as an Absolute Bar to a deficiency judgment." *Crocker National Bank v. Emerald*, 221 Cal. App. 3d 852, 270 Cal. Rptr. 699 (1990).

The only issue before this Honorable Court is whether the Pennsylvania Court, after recognizing as valid the judgment of a sister state, is also bound by the strict requirements of that judgment as to enforcement thereof. These strict requirements went not merely to the execution of the judgment, but to whether in fact there ever was an enforceable judgment as to any alleged deficiency. No action to open or strike the registered judgment from California was ever taken by the Pennsylvania courts contrary to the Full Faith and Credit obligation. This instant case is more than a "mere procedural transfer of a final judgment to Pennsylvania", rather it is a commitment for which the Pennsylvania courts must act as if and on behalf of the California courts and its respective law. *Barns v. Buck*, 346 A.2d 778 (Pa. 1975). The principle of the Full Faith and Credit Clause and the meaning of 28 U.S.C. §1783 obligate the Pennsylvania courts to act in accordance with the laws of California pertaining to the California judgment, being a sister state, in recognition of the California court ruling. The Petitioner's failure to provide notice as set forth in California Commercial Code §9504 rendered the judgment valid but unenforceable as is necessary under Uniform Enforcement of Foreign Judgments Act. 42 Pa. C.S.A. §4306.

The California Court Order, providing that the judgment be enforced in compliance with the California Commercial Code §9504, empowered the Pennsylvania courts the same capacity as the California judiciary through interpretation and in view of its "local statutes and practice", specifically, 13 Pa. C.S.A. §9504.

> "When there has been a commercially reasonable disposition of collateral, the issue arises as to the affect that disposition upon an creditors entitlement to recovery of remaining debt. It is the view in certain jurisdictions that when a sale is found to have been commercially unreasonable, the creditor should be barred entirely from obtaining a deficiency judgment against the debtor." *Savoy v. Beneficial Consumer Discount Co.*, 468 A.2d 465, 503 Pa.74 (Pa.1983), *Western Decor and Furnishings Industries, Inc. v. Bank of America*, 91 Cal. App. 3d 293, 154 Cal.Rptr. 278 (1979), *Miles v. New Jersey Motors, Inc.*, 44 Ohio App. 2d 351, 338 N.E. 2d 704 (1975).

The Petitioner's failure to comply with the requirements of the California Commercial Code §9504 has rendered a commercially unreasonable disposition of collateral, the result being an Absolute Bar from obtaining a deficiency judgment. The Pennsylvania lower court "determined that it is obligated to give Full Faith and Credit to the California Order including the provisions of §9504." App. 18a. The lower court of Pennsylvania noted that the Petitioner "as scrivener of the proposed order signed by Judge Brickner, incorporated the reasonableness requirements of §9504 in the Order". App. 17a. The Respondents set forth that the Petitioner did know or

should have known the notice requirements of the California Commercial Code §9504 prior to registration of the judgment in Pennsylvania and thereafter for enforcement purposes.

The Pennsylvania Superior Court, by affirming the position of the Pennsylvania lower courts, upheld the principle of Full Faith and Credit as applicable to the default judgment registered in Pennsylvania from California.

> "Notice to the debtor is the mechanism that the legislature and the drafters of the Uniform Commercial Code choose to insure that sales of collateral are conducted in a commercially reasonable fashion. Notice serves its purpose by giving the debtor an opportunity to monitor the sale to insure its commercial reasonableness." *Backes v. Village Corner, Inc.*, 197 Cal. App. 3d 209, at 215, 242 Cal.Rptr. 716 at 722 (1987).
>
> "Commercial reasonableness is a statutory requirement for all sales of collateral (Cal. U.Com. Code §9504, subd. (3)); it is not a substitute for compliance with the mandatory notice provisions. The notice requirement is designed to insure commercial reasonableness by preventing secret or collusive sales of collateral. If retrospective arguments about commercial reasonableness could excuse a lack of notice, notice would become a thing of the past." 197 Cal. App. 3d 209, at 216-217, 242 Cal. Rptr. 716 at 723-724 (1987).

The Petitioner's "notice", sent on April 8, 1993, at no time indicated whether or not the sale of the collateral was to be public or private and it failed to meet the specific notice requirements of the California Code §9504

(3). Consequently, under its Full Faith and Credit obligation, the Pennsylvania judiciary found it necessary to recognize the Petitioner's failure to comply with the notice requirements and deny enforcement of the registered judgment from California. App. 20a-21a. The Petitioner, in failing to meet the minimum requirement of defining either public or private sale, is precluded from asserting the protection of private sale status, which requires only that "a private sale may simply recite the date 'on or after' which the collateral will be sold". *Backes v. Village Corner, Inc.*, 197 Cal. App. 3d 209, at 215, 242 Cal. Rptr. 716 at 722 (1987).

> "Notice to the debtor is the mechanism that the legislature and the drafters of the Uniform Commercial Code chose to insure that sales of collateral are conducted in a commercially reasonable fashion. Notice serves this purpose by giving the debtor an opportunity to monitor the sale to insure its commercial reasonableness. The right to a deficiency judgment is conditional and depends on strict compliance with the statutory requirements." As the court stated in *Atlas Thrift Company v. Horan*, 27 Cal. App. 3d 1999, 2003, 104 Cal.Rptr. 315, (1972). *Earl of Loveless, Inc. v. Gabele*, 2 Cal. App. 4th 27, 32-33, 2 Cal.Rptr. 2d 829, 834-835 (1991).
>
> "[T]he rule and requirement are simple. If the secured creditor wishes a deficiency judgment he must obey the law. If he does not obey the law he may not have his deficiency judgment". 2 Cal.App.4th 27, 33, 2 Cal.Rptr. 2d 829, 835 (1991), *Backes v. Village Corner, Inc.*, 197 Cal. App. 3d 215-216, 242 Cal.Rptr. 716, 724-725 (1987). "It is well established in California that failure to comply with the notice requirement

> precludes the secured party from recovering a deficiency judgment against the debtor." 2 Cal. App. 4th 27, 33, 2 Cal.Rptr. 2d 829, 835 (1991), *Connelly v. Bank of Sonoma County*, 184 Cal.App. 3d 1119, 1122, 229 Cal. Rptr. 396 (1986).

Clearly, the California law is serious in compelling compliance with its notice requirements. The Pennsylvania courts in placing scrutiny on the instant case and in furtherance of the Full Faith and Credit Clause and 28 U.S.C. §1738 correctly applied the Absolute Bar Rule of California and denied enforcement of the deficiency judgments.

The California judgment in whole and as set forth by the Honorable Judge Brickner's Order dated January 26, 1993 in the Superior Court of California of the County of Orange has been acknowledged by the Pennsylvania courts as valid and registered therein. Pennsylvania in upholding the Full Faith and Credit principles and the underlying unified judicial system mandated by Article 4 of the Constitution has ruled consistently with the laws of California, its sister state. Pennsylvania, in recognizing the notice requirements of the California Commercial Code §9504 and of the Order directing the Petitioner to comply with that section, is consistent with the Full Faith and Credit mandate of Article 4, Section 1 of the U.S. Constitution, 28 U.S.C. §1738 and Pennsylvania's adoption of the Uniform Enforcement Judgment Act 42 Pa. C.S.A. §4306. The Petitioner, as scrivener of the Order upon which the instant case has been relentlessly litigated, has subjected itself to strict compliance with California Commercial Code §9504 and as a result of its own actions must deal with the consequences. If anyone

sought to avoid the dictates of the original judgment, it was the Petitioner, not the Respondent, who sought selective enforcement of all but the one provision that it found most troublesome. Similarly, the Petitioner itself registered the judgment in Pennsylvania and relied upon that state's courts for the enforcement of the judgment according to that judgment's own terms. The Pennsylvania courts must be recognized to possess the ability to construe and apply the laws of the rendering state in effectuating the stated terms of the judgment. The courts of Pennsylvania must be given the latitude of reasonable interpretation and enforcement of foreign judgments registered within its Commonwealth. Failure to allow the individual States judiciaries the opportunity of interpretation and review within the scope of Article 4, Section 1, of the U.S. Constitution is contrary to the Full Faith and Credit principle the state courts are attempting to uphold.

The properly entered judgment of one state does not lose its legal efficacy upon transfer to a sister state. If that were so, the whole purpose of the Full Faith and Credit clause and statutory enactments would be vitiated. All the substantive provisions of the judgment as originally transferred retain their character upon transfer of the judgment. To allow otherwise would be to invite the evasion of judicial mandates of one jurisdiction by attempting to "filter" them through a sister state. All judgments must be enforced on their stated terms. The Petitioner simply cannot be permitted to seek enforcement of a judgment from a transferree court and then

refuse to allow the transferree court the right to determine what the judgment requires. The fact that the Petitioner apparently inadvertently failed to read the original judgment before attempting to comply with it does not give license to the transferree court to deliberately do likewise at the Petitioner's behest in order to relieve the Petitioner of the effects of its own oversight. The instant case presents no compelling reason justifying such a radical departure from sound jurisprudence.

CONCLUSION

The state court correctly determined that it was bound by the requirements of Full Faith and Credit to accord validity to all the substantive provisions of the properly registered sister state judgment, including the requirement that notice conforming to California Commercial Code Section 9504 be given the Respondents. The state court likewise properly concluded that the law of the rendering state precluded enforcement of any alleged deficiency due to the express terms of the transferred judgment. That court's decision is in complete conformity with the decisions of this Court and none of the considerations which would support a grant of review are present

in this case. Accordingly, Respondents respectfully request that the Petition for Certiorari be denied.

Respectfully submitted,

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Dated: February 6, 1998

FILED
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CLERK

No. 97-1055

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

FINOVA CAPITAL CORPORATION
SUCCESSOR IN INTEREST TO
BELL ATLANTIC TRICON LEASING CORPORATION,
Petitioner,

v.

LIFECARE X-RAY, INC.; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; YAHYA FADL; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; and LIFECARE CARDIAC CENTER, INC.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA PITTSBURGH

SUPPLEMENTAL BRIEF OF PETITIONER

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February 27, 1998

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AUTHORITY FOR SUPPLEMENTAL BRIEF

This Supplemental Brief is being filed pursuant to Rule 15.8.

The Petition for a Writ of Certiorari was filed with the Court on December 18, 1997. On January 13, 1998, this Court filed its Opinion in *Baker v. General Motor Corp.* _____ U.S. _____ (1998).[1] The *Baker* case is believed to be highly relevant to the question presented to this Court. The Baker case was not cited by the Respondents in their Brief filed on February 6, 1998.

SUPPLEMENTAL STATEMENT OF THE CASE

This Appeal is taken from the affirmation by the Superior Court of Pennsylvania of the Lower Court's Opinion and Order dated March 26, 1996. App. 13a.-25a. Prior to the final Order which has been appealed, the Lower Court issued two preliminary Opinions and Orders which are now included in the Supplemental Appendix.[2]

The first preliminary Opinion was rendered in connection with the issuance of the Rule to Show Cause why the Judgment should not be opened or stricken. Your Petitioner filed Preliminary Objections setting forth service on all of Respondents and acknowledgement of the California action by Robert Blum, Attorney for all of the Respondents at the time. The first lower Court Opinion and Order dated May 19, 1994, dismissed the Preliminary Objections and proceeded to order issuance of the Rule to Show Cause why the Judgment should not be opened or stricken. Supp. App. 1a-5a. By Order dated June 24, 1993, the court denied Petitioner's request for security for the stay ordered on May 19, 1993. R-27a. By stipulation of the parties the court was requested to consider the effect in Pennsylvania of sub-paragraph (c) [3] of each judgment entered by the California Court relating to notice requirements under The Uniform Commercial Code. Supp.

1. References to this case in this Supplemental Brief are styled as *Baker* with reference to the slip opinion of each Justice.

2. References to the Supplemental Appendix in this Supplemental Brief are styled "Supp. App. _a".

App. 6a-8a. Your Petitioner argued (a) that the reference to §9504 was in error as to the leases entered into after January 1, 1991, (b) that the specific reference to "commercially reasonable" under §9504 did not include the notice requirement and (c) that only the money judgment was transferred to Pennsylvania and not the enforcement provisions. The lower court by Opinion and Order dated January 2, 1995, determined that all of these arguments were without merit. Supp. App. 9a-11a. The lower court then went on to consider the notice sent the Respondents in light of California Law in its Final and Appealable Opinion and Order dated March 26, 1996. App. 13a-25a. The Order of the Pennsylvania Superior Court denying reconsideration is also included in the supplemental appendix. Supp. App. 12a.

DISCUSSION

The *Baker* case provides an excellent review of the full faith and credit command. The Pennsylvania courts have not acted in accordance with the wisdom provided. California entered money judgments against the Respondents. Pennsylvania concedes that these are valid final judgments. Lower Court Opinion, App. 16a. The California court in addition to the money judgment issued the ground work for reclaiming the equipment within California. As to each lease the California Order provided in Paragraph 3, *inter alia:*

> "For an order that the items of equipment. . . be delivered to Plaintiff. App. 36a, 37a, 38a.

This order would lay the groundwork in California to obtain possession of the equipment, if necessary. If the equipment was sold in California under the Order, an issue might arise under California law as to the interpretation of the phrase "in a commercially reasonable manner as provided by Commercial Code §9504". App.36a-38a. The equipment was not delivered to the Plaintiff in California and no process issued from the California courts to enforce delivery of possession.

The preclusive effect of your Petitioner's judgment in California established contractual money damages that your Petitioner was owed for defaults under the various equipment leases, *inter alia:*

1) $252,039.23 by Lifecare Laboratories, Inc. and its guarantors;

2) $276,868.04 by Lifecare Cardiac Center, Inc. and its guarantors;

3) $592,213.27 by Lifecare X-Ray, Inc. and its guarantors.

These judgments were for specified dollar amounts and are not modifiable other than by payments made voluntarily, through execution or sale of the leased equipment. Your Petitioner has always maintained that these were final judgments entitled to full faith and credit.

Justice Ginsburg in *Baker* states:

> Regarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. For claim and issue preclusion (res judicata) purposes, in other words, the judgment of the rendering State gains nationwide force. (Citations and Footnote omitted.) *Id.,* slip op. at 9.

That nationwide force of the judgment can be implemented by the interstate registration procedure provided for in the Revised Uniform Enforcement of Foreign Judgments Act. *Id.* Ginsburg, slip op. at 11 n. 8.

The California judgment was so registered by Petitioner in Pennsylvania. The Uniform Enforcement of Foreign Judgments Act adopted by Pennsylvania, 42 Pa. C.S.A. § 4306, App. 45a-46a, is also exacting. The definition of "foreign judgment" means "*any judgment,* decree or order of a court of the United States or of any court *requiring the payment of money* which is *entitled to full faith and credit* in this Commonwealth." (emphasis added) *Id.* § 4306(f) App. 46a

Upon proper filing in Pennsylvania under the Uniform Act the status of the foreign judgment is defined:

> The clerk shall treat the foreign judgment in the same manner as a judgment of any court of common pleas of this Commonwealth. A judgment so filed shall be a lien as of the date of filing and shall have the same effect and be subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of any court of common pleas of this Commonwealth and may be enforced or satisfied in like manner. *Id.* § 4306(b). App. 45a.

Justice Ginsburg in *Baker* further states:

> Full faith and credit, however, does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister State judgment as preclusive effects do; such measures remain subject to the even-handed control of forum law. *See McElmoyle ex rel. Bailey v. Cohen,* 13 Pet. 312, 325 (1839) (judgment may be enforced only as "laws [of enforcing forum] may permit"); see also Restatement (Second) of Conflict of Laws §99 (1969) ("The local law of the forum determines the methods by which a judgment of another State is enforced."). (footnote omitted). Ginsburg, slip op. at 11.

See also concurring Opinion of Justice Scalia. *Id.* Scalia, slip op. at 1.

When the California judgment was entered the contract merged with the judgment and the choice of laws provisions of the contract ceased to be applicable. Restatement (Second) of Conflict of Laws §95 cmt. c(1969). The language of Paragraphs 3 in the California Order only provided for judicial enforcement action within the boundaries of California. "Orders commanding action or inaction have been denied enforcement in a sister State when they purported to accomplish an official act within the exclusive province of that other State. . . ." *Baker,* Ginsburg, slip op. at 11.

Once the California judgment was properly registered in Pennsylvania only the money judgment was available to your Petitioner in Pennsylvania for execution. 42 Pa. C.S.A. § 4306 App. 45a-46a.

Your Petitioner could not have used the California Order in Pennsylvania as a basis for the issuance of any writ other than normally provided for under Pennsylvania execution procedures. No writs or execution relative to the leased equipment were issued in Pennsylvania. The Defendants did not deliver the equipment to the Plaintiff in Pennsylvania. Your Petitioner reclaimed its equipment under the Lifecare X-Ray, Inc. lease, in place, at the former offices of Lifecare X-Ray, Inc. located in Pennsylvania notwithstanding an attempted distraint for rent by the Landlord. R 50a-51a.

The Lifecare Cardiac equipment was purchased by one of the guarantors [not one of the respondents] after the Motion to Open or Strike was filed and after a new Notice of Intention to Proceed with Private Sale was given. App. 56a-59a. The Lifecare Laboratories equipment was similarly sold after the Motion to Open or Strike and again with a new Notice of Intention to Proceed with Private Sale. App. 60a-63a.[3] Notwithstanding the new notices the lower court purports by its Order of March 26, 1996, to "bar" your Petitioner from further proceedings to enforce any of the judgments registered in Pennsylvania including the Lifecare Cardiac and Lifecare Laboratories claims. App. 24a-25a

Pennsylvania's order "barring" your Petitioner from "seeking deficiency judgments" is inconsistent with the status of the record. Your Petitioner is not "seeking deficiency judgments" but the right to enforce properly registered and valid Pennsylvania judgments. After denying the Respondents Motion to Open or Strike Judgment the Pennsylvania lower court without forewarning "enjoined" your Petitioner from proceeding with execution on the validly registered judgments. The Respondents did not request an injunction, no evidentary

3. These notices were provided to meet the objections being raised in the Motion to Open or Strike even through your Petitioner does not believe they were required under the California Order.

hearing was held to support a permanent injunction and your Petitioner was never provided an opportunity to raise equitable defenses.[4] Most importantly the Respondents never alleged and the court never found that the Respondents would be entitled to injunctive relief in California. Restatement (Second) of Conflicts of Laws § 115 cmt. e(1969). See Cal. Civ. Proc. Code § 473 (West 1997) [Six month period within which to bring motion to vacate judgment in California had expired when Respondents filed their Motion in Pennsylvania in March, 1994.]

As the basis for its "sanction", the Pennsylvania court in issuing its own injunction construed the language of Paragraph 3 of the California Order as an injunction requiring action by your Petitioner. In *Baker* this Court has indicated:

> Sanctions for violations of an injunction, in any event, are generally administered by the court that issued the injunction. *See, e.g., Stiller v. Hardman,* 324 F. 2d 626, 628 (CA2 1963) (non-rendition forum enforces monetary relief portion of a judgment but leaves enforcement of injunctive portion to rendition forum). *Id.* Ginsburg, slip op. at 12-13.

Justice Kennedy concurring in *Baker* has also noted Michigan's comity concerns in connection with a potential modification of an injunction by the court which entered it. Justice Kennedy stated:

> It reflects Michigan's determination that, within the State of Michigan itself, respect for the issuing court and judicial resources are best preserved by allowing the issuing court to determine whether the injunction should apply to further proceedings. *Id.* Kennedy, slip op. at 8.

Pennsylvania has made a similar determination by a long line of case law with regard to the transfer of judgment from one county to another county within Pennsylvania. In *Selden v. Jackson,* 169 A.2d 301 (Pa. 1961) the court quoted with

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4. Lifecare Laboratories, Inc. and Lifecare Cardiac Center, Inc. were not parties to the Motion which purported to grant them relief. See Petitioner's Brief, Page 7. See also Petition for Rule to Show Cause R-5a.

approval from *First National Bank & Trust Co. of Bethlehem v. Laubach,* 5 A.2d 139 (Pa. 1939):

> It has been held time and again that the court of the county to which the judgment is transferred has no power over it except for purposes of execution, and cannot inquire into its merits. That can be done only by the court in which it was originally obtained: *King v. Nimick,* 34 Pa. 297; *Mellon v. Guthrie,* 51 Pa. 116; *Beck v. Church,* 113 Pa. 200; *Nelson v. Guffey,* 131 Pa. 273; *Lehigh & New England R.R. Co. v. Hanhauser,* 222 Pa. 248; *Shotts & Co. v. Agnew & Barnett,* 81 Pa. Superior Ct. 458, 461. 169 A.2d at 301, 302.

In *Binenstock Trust,* 190 A.2d 288 (Pa. 1963) the court stated:

> It is well established that orderly judicial procedure dictates that the court which first acquires jurisdiction over a matter be permitted to decide all questions relating thereto. 190 A.2d at 291.

Cited with approval in *Tallarico v. Bellotti,* 200 A.2d 763, 765 (Pa. 1964). See also *Tabas v. Robert Development Company,* 297 A.2d 481, 484 (Pa. Super. 1972).

If courts in Pennsylvania are deemed inappropriate for modifying a judgment or order of the issuing court from a sister county there would appear to be no grounds or justification for permitting the local court of Westmoreland County, Pennsylvania, to modify a judgment rendered by the court of Orange County, California (if an interpretation or modification of the California judgment is even required). Pennsylvania precedent does provides that the validity of a foreign judgment should be decided by the courts of the rendering State. In *Barnes v. Buck,* 346 A.2d 778 (Pa. 1975) the court stated:

> 12. Even had the divorce decree not been challenged and upheld by the courts of Ohio, a collateral attack upon it by a plaintiff in the courts of this Commonwealth would not normally be entertained. Although the full faith and credit clause does not require a sister State to give a greater, more conclusive or more final

> effect to a foreign judgment or decree than would be given it by the courts of the rendering State, see the Act of June 25, 1948, note 4 *supra,* 28 U.S.C. § 1738; and Restatement (Second) of Conflict of Laws § 115 and Comment *b* thereto (1971), principles of interstate comity would indicate abstention by Pennsylvania courts in favor of the courts of the rendering State, in light of their special competence to pass upon the validity of the public acts, records and judicial proceedings of that State. Thus a party seeking relief in our courts on the basis of asserted invalidity (other than jurisdictional) of the judicial proceedings of another State should normally be relegated to the courts of that State for the establishment of the invalidity. 346 A.2d at 783 n.12.

This rule should be made a part of the national jurisprudence and not merely be relegated to comity.

This case stands as a testimonial of failure to preserve judicial resources by not requiring the defendants to return to the issuing court to raise questions concerning the interpretation and validity of the California Order (if such a determination is even deemed to be necessary). [3 years in the lower courts and 2 years on appeal].

In the event this Court should determine that the validity of the California judgment can properly be reviewed by the Pennsylvania courts, it is this Court's obligation to determine how the highest Court of California would decide the issue. "[This Court] cannot decline to inquire into these state-law questions when inquiry will obviate new extensions or exceptions to full faith and credit." *Baker,* Kennedy, slip op. at 6. "Full faith and credit measures the effect of a judgment by all the laws of the rendering State, including authoritative ruling of that State's highest court on questions of issue preclusion and jurisdiction over third parties." *Id.* Kennedy, slip op. at 7. See *Barber v. Barber,* 323 U.S. 77,81. (1944) [It is the duty of this Court upon an independent investigation, to determine for itself the law of the rendering state.]

Again to the extent that it is necessary to consider the effect of Paragraph 3 of the California Order, this case can answer the questions which have vexed the scholars and the authors of the Restatement. *Baker,* Kennedy, slip op. at 3,4.

Finally, the Pennsylvania Courts have stood any notion of a public policy exception on its head and reversed the usual role of the non-rendering State in refusing to enforce a judgment as hostile to policies reflected in the judgment of another State. *Estin v. Estin,* 334 U.S. 541, 546 (1948). The Respondents appear to assert that the "local statutes and practices" of Pennsylvania under 13 Pa. C.S.A. § 9504 support "barring" the Petitioner's judgments under the case law of Pennsylvania's highest court in *Savoy v. Beneficial Consumer Discount Company,* 468 A.2d 465 (Pa. 1983). Respondents' Brief at 17. Quite to the contrary, the Pennsylvania Supreme Court rejected the "Absolute Bar Rule" in favor of the rebuttable presumption and stated:

> We believe that the latter approach, [rebuttable presumption] which was adopted by Superior Court in the instant case, is the more enlightened and equitable. The former approach, [the Absolute Bar Rule], foreclosing a creditor from the possibility of securing any deficiency judgment, would provide the debtor with a windfall relief from his obligation while extinguishing a creditor's right to recover sums truly owed. 468 A.2d at 467.

To the extent that Paragraph 3 of the California Order has any relevance in Pennsylvania, the Pennsylvania courts in the instant case have flown in the face of the more enlightened and equitable rule of Pennsylvania (local statutes and practices) and provided the Respondents with a windfall relief extinguishing judgments which are truly owed.

CONCLUSION

This Court notes that 44 States and the District of Columbia have adopted the Revised Uniform Enforcement of Foreign Judgments Act for the interstate registration of judgments.[5] This Act was adopted by Pennsylvania and used by your Petitioner. Guidance from this Court would be beneficial in clarifying the respective rights and obligations which inure to the parties when a proper registration is made under the Uniform Enforcement of Foreign Judgment Act and will help take the important law of registering interstate judgments into the Twenty-First Century. The Pennsylvania courts have erred in "barring" the enforcement of final judgments properly registered. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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February 27, 1998

5. *Baker*, Ginsburg, slip op. at 11, n.8.

SUPPLEMENTAL APPENDIX

Supplemental Appendix "A"

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

BELL ATLANTIC TRICON LEASING CORPORATION, Plaintiff	:	
vs.	:	No. 2616 of 1993
JAMES E. NICOLETTE, FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID D. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC., and LIFECARE X-RAY, INC., Defendants	:	

OPINION

This matter comes before the Court upon the Petitions for Issuance of a Rule to Show Cause why the Judgment entered should not be Opened filed by James E. Nicolette, Frank Santamaria, Frank V. Maida, Robert A. Holst, Helarion A. Beronilla, Jr., Narcisa Lipana, Charles Chang, Samuel Flanagan, Yahya Fadl, Angel Balcita, Barid D. Jana, Paul Dascani, Gregory Spain, William Hughes, and Lifecare X-Ray, Inc.

Also before the Court are the Plaintiff's Preliminary Objections in the nature of a Demurrer to the Petitions for Issuance of a Rule and a Motion for Sanctions against the Defendants James E. Nicolette, Frank Santamaria, Frank V. Maida, Robert A. Holst, Helarion A. Beronilla, Jr., Narcisa

Lipana, Charles Chang, Samuel Flanagan, Yahya Fadl, Angel Balcita, Barid D. Jana, Paul Dascani, Gregory Spain, and William Hughes.

A default judgment was entered against the Defendants, January 26, 1993 in Orange County, California. (See Plaintiff's entry of Judgment pursuant to Uniform Enforcement of Foreign Judgments Act, Exhibit A). Judgment was entered for damages, attorney's fees, and delivery of specified personalty and equipment. The Order provided that upon delivery, the Plaintiff shall sell or dispose of the personal property in accordance with Commercial Code §9504.

In April, 1993, the judgment was transferred to Westmoreland County, Pennsylvania. The Defendants were given notice of the entry of the judgment.

By letter, February 10, 1994, the Defendants were notified that the equipment and personal property had been sold by the Plaintiff and a deficiency existed. Interrogatories in Aid of Execution were provided the Defendants by the Plaintiff. As a result, the Defendant presented the within Petition to Open Judgment based upon the failure of the Plaintiff to comply with the provision of the default order; the failure to provide notice of the sale in accordance with §9504.

The Plaintiff argues that the Defendants' Petitions do not state a cause of action and fail to set forth a valid defense to the judgment. The Plaintiff's position is that the judgment is based upon the failure of the Defendants to make payments pursuant to various leases, not based upon the resale of equipment.

A Petition to Open Judgment must set forth averments that demonstrate a meritorious defense, the petition was promptly filed, and provide a reasonable excuse as to why a timely answer was not filed. *See Cross v. 50th Ward Community Ambulance Serv.*, 365 Pa. Super. 74, 528 A.2d 1369 (1987).

The Plaintiff argues that the Defendants have not set forth any explanation as to why the Complaint was not

answered or as to why there was a delay in failing the Petition to Open. Therefore, the Plaintiff requests that the Petitions be dismissed.

The Petitions were promptly filed by the Defendants upon notice that a sale had been conducted. Further, the alleged failure to provide notice of the sale in accordance with §9504 is an absolute defense to the deficiency judgment. *See In re Kirkland,* 915 F.2d 1236 (9th Cir. 1990). An issue exists as to whether the Defendants had notice of the sales and therefore, have an absolute defense to the deficiency judgment under California Law. *See Kirkland* at 1241.

The Court will enter the following Order:

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

BELL ATLANTIC TRICON LEASING CORPORATION, Plaintiff	:	
vs.	:	No. 2616 of 1993
JAMES E. NICOLETTE, FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID D. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC., and LIFECARE X-RAY, INC., Defendants	:	

ORDER OF COURT

AND NOW, to wit, this 19th day of May, 1994, the Petitions for Issuance of a Rule to Show Cause why the Judgment entered should not be Opened filed by James E. Nicolette, Frank Santamaria, Frank V. Maida, Robert A. Holst, Helarion A. Beronilla, Jr., Narcisa Lipana, Charles Chang, Samuel Flanagan, Yahya Fadl, Angel Balcita, Barid D. Jana, Paul Dascani, Gregory Spain, William Hughes, and Lifecare X-Ray, Inc. are granted.

The Preliminary Objections of the Plaintiff in the nature of a Demurrer are denied.

The Plaintiff's Motions for Sanctions against the Defendants James E. Nicolette, Frank Santamaria, Frank V. Maida, Robert A. Holst, Helarion A. Beronilla, Jr., Narcisa Lipana, Charles Chang, Samuel Flanagan, Yahya Fadl, Angel Balcita,

Barid D. Jana, Paul Dascani, Gregory Spain, and William Hughes are denied without prejudice.

Rule is entered upon the Plaintiff to show cause why Judgment should not be opened and/or stricken. A Hearing is scheduled for Wednesday, August 31, 1994 at 11:00 a.m. All execution and attachment proceedings are stayed pending further Order of Court.

BY THE COURT

/s/ Bernard F. Scherer, Judge

Bernard F. Scherer, Judge

ATTEST:

/S/ Ron Diehl

Prothonotary

Supplemental Appendix "B"

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BELL ATLANTIC-TRICON LEASING CORPORATION, Plaintiff	:	
vs.	:	No. 2616 of 1993
JAMES E. NICOLETTE, FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID D. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC., and LIFECARE X-RAY, INC., Defendants	:	

ORDER OF COURT

AND NOW, to wit, this 23rd day of June, 1995, upon motion of David L. Robinson, Esquire, Attorney for Plaintiff, it is hereby ORDERED that the letter of Donald P. Tarosky, Esquire, dated August 31, 1994, and attached hereto and marked Exhibit "A", is and shall become a part of the record.

BY THE COURT:

/s/ Bernard F. Scherer

ATTEST:

Prothonotary

EXHIBIT "A"

Donald P. Tarosky
Attorney at Law
126 North Maple Avenue
Greensburg, Pennsylvania 15601-2579

Telephone: (412) 836-1720
Telecopier: (412) 836-3911

August 31, 1994

Honorable Bernard F. Scherer
Court of Common Pleas of Westmoreland County
Westmoreland County Courthouse
Courthouse Square
Greensburg, PA 15601

RE: Bell Atlantic Tricon v. James E. Nicolette, et.al.
No. 2616 of 1993

Dear Judge Scherer:

Following our status conference today, all attorneys met in your courtroom with regard to framing the preliminary issue to be decided by this Court. It is the intent of the parties to have this issue decided thereby giving direction to the parties with regard to further discovery and litigation. With the consent of all parties, the issue to be decided is as follows:

> "What effect, if any, does subparagraph (c) of each judgment entered by Judge David H. Brickner of the Superior Court of the State of California have on the notice requirements of the Uniform Commercial Code?"

October 25, 1994, has been established by the Court as the date for oral argument on this issue. All counsel have agreed to a briefing schedule, subject to approval by this Court, such that briefs of the defendants would be filed and served on or before September 26, 1994, and brief of the plaintiff would be filed and served on or before October 14, 1994. If this is not acceptable to the Court, all counsel have agreed to comply with any briefing schedule that may be established by the Court. As indicated in the status confer-

ence, the submission of this issue to the Court for decision is not intended to waive any other issues or arguments counsel for plaintiff or defendants may have in this matter.

I am sending a copy of this letter to all counsel, with the understanding reached at the status conference, that if any party does not agree that this letter accurately sets forth the issue to be decided, the briefing schedule or any other matter set forth herein, such party would notify the Court and all other counsel in writing as soon as possible following receipt of this letter.

Certainly, if the Court has any questions or further direction with regard to this matter, all parties have agreed to promptly respond to any inquiries.

If anything further is needed at this time, please notify me accordingly. Otherwise, I will proceed with preparation of my brief in accordance with the schedule set forth above.

Very truly yours,

/s/ Donald P. Tarosky

Donald P. Tarosky

cc: David L. Robinson, Esquire
F. Scott Gray, Esquire
Robert Blum, Esquire
Kimberly J. Gallagher, Esquire

Supplemental Appendix "C"

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

BELL ATLANTIC TRICON LEASING CORPORATION, Plaintiff	:	
vs.	:	No. 2616 of 1993
JAMES E. NICOLETTE, FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID D. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC., and LIFECARE X-RAY, INC., Defendants	:	—

OPINION

This matter comes before the Court upon the Petition to Open and/or Strike Judgment of the Defendants.

This opinion arises from a submission by the parties and is entered solely for the purpose of determining whether the notice requirements of the California Uniform Commercial Code have any effect upon the judgment transferred to Pennsylvania. The resolution of this submission is dispositve of further proceedings, discovery, and/or the issues joined in this case.

The original Order, entering default judgment against the Defendants in California (hereinafter referred to as the "California order"), provides:

> Upon delivery of possession, Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code Section 9504.

The position of the Defendants is that the Plaintiff disposed of the collateral without providing proper written notice to the Defendants. Therefore, the Defendants maintain that under California law and the California order, they cannot be held liable for any deficiency judgment representing the difference between the amount of the judgment and the amount the Plaintiff received from the disposition of the collateral.

The Plaintiff responds with several arguments. First, the Plaintiff maintains that the present matter involved equipment leases and therefore, §9504 cannot apply. The Plaintiff also argues that §9504 has two components, notice to a debtor and a requirement that the creditor proceed in a commercially reasonable manner in the disposition of the collateral. The Plaintiff contends that the California order only provides that the collateral be disposed of in a "commercially reasonable manner" and does not specifically include the notice requirements. Finally, the Plaintiff suggests that only the money judgment was transferred to Pennsylvania and the requirement to perform in accordance with §9504, was not transferred to Pennsylvania. These arguments are without merit.

Full faith and credit must be given to the California order which was transferred in its entirety. The equipment lease contracts from which this controversy arises provide that California law was to govern all aspects of the subject leases.

Regardless of whether the equipment leases at issue are secured transactions under the California Commercial Code, the California order imposes the requirements of California Commercial Code, §9504. The plain language of the California order requires that the Plaintiff be held to the provisions of §9504, in its entirety.

Further, California courts have held that the disposition of collateral in a commercially reasonable manner requires notice. *Backes v. Village Corner, Inc.*, 197 Cal. App.3d 209, 242 Cal. Rptr. 716 (1987).

The Court will enter the following Order:

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

BELL ATLANTIC TRICON LEASING CORPORATION, Plaintiff	:	
vs.	:	No. 2616 of 1993
JAMES E. NICOLETTE, FRANK SANTAMARIA; FRANK V. MAIDA; ROBERT A. HOLST; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANAGAN; JOHN R. KENNERDELL; DOMINIC W. DILEO; YAHYA FADL; ANGEL BALCITA; BARID D. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; LIFECARE CARDIAC CENTER, INC., and LIFECARE X-RAY, INC., Defendants	:	

ORDER OF COURT

AND NOW, to wit, this 2nd day of January, 1995, the Court finds that the notice requirements of the California Uniform Commercial Code §9504 govern the California order and judgment and this Court is bound to accord the provisions of the California Uniform Commercial Code §9504 full faith and credit.

BY THE COURT

/s/ Bernard F. Scherer

Bernard F. Scherer, Judge

ATTEST:

/s/ Ron Diehl

Prothonotary

Supplemental Appendix "D"

The Superior Court of Pennsylvania
Office of the Prothonotary

1015 GRANT BUILDING
PITTSBURGH, PENNSYLVANIA 15219

DAVID A. SZEWCZAK, ESQUIRE
PROTHONOTARY (412) 565-7592

ELEANOR R. VALECKO
DEPUTY PROTHONOTARY

March 25, 1997

David Robinson, Esquire
101 West Pittsburgh Street
Greensburg, PA 15601

IN RE: Finova Capital Corporation, et al v. James E. Nicolette, et al
Nos. 129 and 729 Pittsburgh 1996

Dear Mr. Robinson:

The Court has entered the following Order on your Motion for Reargument in the above-captioned matter:

"ORDER OF COURT

The court hereby denies the application filed January 29, 1997 requesting reargument or reconsideration of the decision dated January 14, 1997.

DATE: March 25, 1997 PER CURIAM"

Very truly yours,

/s/ Eleanor R. Valecko

DEPUTY PROTHONOTARY

ERV:mlh
cc: Honorable Bernard Scherer
Dennis Shean, Esquire
Robert Blum, Esquire
Frederick Gray, Esquire
Donald Tarosky, Esquire